



W.P.No.35385 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Orders Reserved on: 28.03.2024

Orders Pronounced on : 08.07.2024

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.35385 of 2023

and

W.M.P.Nos.35355, 35356 and 35359 of 2023

and

4023 and 4024 of 2024

--

1. K.Kodeeswaran
2. K.Arunkumar
3. K.Sudha
4. K.Divya

.. Petitioners

Vs.

1. The Special District Revenue Officer/
Land Acquisition Officer,
Tamil Nadu Road Sector Project-II,
68/136, K.Gangai Street,
Nedunchallai Nagar, Salem-5, Salem-636 005.
2. Tmt.R.Kavitha,
Spl.DRO (Land Acquisition Officer),
Tamil Nadu Road Sector Project-II,
Nedunchallai Nagar, Salem-5.
3. The District Collector, Salem District, Salem.
4. The Commissioner of Land Administration,
Chepauk, Chennai-5.

Page No.1/74



W.P.No.35385 of 2023

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5. The Government of Tamil Nadu,
Rep. by its Secretary,
Highways Department,
Fort St.George, Chennai-9.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records from the fifth respondent relating to the issue of G.O.(Ms).No.29, Revenue and Disaster Management Department, Land Administration Wing (LA-1(1)) Section, dated 24.01.2019 and from the first respondent relating to the issue of the Award No.4/2017 (L.C.No.184) in No.878/B4/2022, dated 15.09.2022, (actually served on the petitioner on 30.05.2023), in respect of the petitioners lands having an extent of 80 Sq.Mt. situated in T.S.No.J/29/2-3 in Maravaneri Village, Salem Taluk and District, acquired by the first respondent, quash the same and consequently to direct the first respondent to pass a fresh award truly in accordance with the mandate of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and to pay the petitioners the Award amount so passed afresh along with appropriate interest in accordance with the said Act and compounding the same for every 6 months period after a year of taking possession, till the date of payment after deducting the amounts already paid to the petitioners on 17.02.2023 and 20.10.2023 within a time frame as may be fixed by this Court and also to direct the fifth respondent to initiate appropriate disciplinary and criminal proceedings against the second respondent and others whose names are not known to the petitioners who are party to the passing of the impugned Award. (Prayer amended as per order dated 28.03.2024 in W.M.P.No.4022 of 2024 in W.P.No.35385 of 2024).

Page No.2/74



W.P.No.35385 of 2023

For petitioners : Mr.N.Subramaniyan

For respondents : Mr.J.Ravindran, Addl. Advocate General
assisted by Mr.T.Arun Kumar, Addl.G.P. for
RR-1, 3, 4 and 5

No appearance for R-2

ORDER

The petitioner(s) had filed the present Writ Petition seeking to issue a Writ of Certiorarified Mandamus to call for the records from the fifth respondent relating to the issue of G.O.(Ms).No.29, Revenue and Disaster Management Department, Land Administration Wing (LA-1(1)) Section, dated 24.01.2019 and from the first respondent relating to the issue of the Award No.4/2017 (L.C.No.184) in No.878/B4/2022, dated 15.09.2022, (actually served on the petitioner on 30.05.2023), in respect of the petitioners lands having an extent of 80 Sq.Mt. situated in T.S.No.J/29/2-3 in Maravaneri Village, Salem Taluk and District, acquired by the first respondent, quash the same and consequently to direct the first respondent to pass a fresh award truly in accordance with the mandate of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and to pay the petitioners the Award amount so passed afresh along with appropriate interest in accordance with the said Act and compounding the same for every 6 months period after a year of taking possession, till the date of payment after deducting

Page No.3/74



W.P.No.35385 of 2023

the amounts already paid to the petitioners on 17.02.2023 and 20.10.2023 within a time frame as may be fixed by this Court and also to direct the fifth respondent to initiate appropriate disciplinary and criminal proceedings against the second respondent and others whose names are not known to the petitioners who are party to the passing of the impugned Award. (Prayer amended as per order dated 28.03.2024 in W.M.P.No.4022 of 2024 in W.P.No.35385 of 2024).

2. The petitioners have filed this Writ Petition challenging the impugned Award passed by the first respondent with consequential relief on the ground that the impugned Award has been passed in blatant violation of the mandate of Sections 26 to 28 and 80 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No.30 of 2013) as well as specific order of this Court, dated 03.08.2022, as it causes huge financial loss to the petitioners, thereby denying them the guarantee mandated under Article 300-A of the Constitution of India.

3. Notice under Section 15(2) of the Tamil Nadu Highways Act, 2001 for acquiring a portion of petitioners' land situated in Block No.29, Ward No.J, T.S.No.2/3 to an extent of 140 Sq.Mtr., situated at Periyeri Village, Salem, was issued on 02.07.2016, which was also published in Daily Thanthi newspaper on 18.07.2016. Objections were made pointing out illegality in acquiring lands under the State Act instead of the said Central Act of 2013, on 07.08.2016,

Page No.4/74



W.P.No.35385 of 2023

23.08.2016 and 08.02.2017. However, on 14.09.2016, enquiry was conducted pursuant to notice dated 02.09.2016 under Section 15(3) of the State Act and signatures were obtained in the prescribed format, wherein, it was made as if the consent was given to receive the highest compensation that may be arrived at as mandated under the Central Act of 2013. On 01.02.2017 and 25.05.2017, Section 15(1) Notification was issued in Government Gazette and subsequently, on 14.06.2017, an Errata was issued to the original Notification reducing the extent of land to be acquired from 140.50 sq.mts. to 80 sq.mts. On 17.02.2017, enquiry under Section 19(2) was conducted, pursuant to Section 19(2) notice, dated 09.02.2017 and on that day, the petitioners objected the proposed compensation based on the rate of Rs.6,000/- per Sq.Ft. On 09.02.2017, Axis Bank to which the building premises were rented pursuant to the lease agreement, dated 10.11.2011 had written to vacate the premises on 07.03.2017 and at that time of vacating, the rent was Rs.92,000/- per month. On 30.08.2017, the Award enquiry under Section 19(5) was conducted pursuant to notice dated 11.08.2017, but no Award was passed on that day. On 12.09.2017, the petitioner made a detailed representation as to how the compensation has to be fixed. Strangely, without inviting the land owners to be present at the time of passing of the Award, the Land Acquisition Officer/District Revenue Officer, Salem, passed an Award for Rs.1,08,94,071/- under the State Act in blatant violation of the Central Act and the Rules 2017 framed by the Tamil Nadu

Page No.5/74



W.P.No.35385 of 2023

Government and published in Tamil Nadu Government Gazette on 21.09.2017.

Without communicating the same officially, the amount was deposited in the Principal Sub-Court under Sections 22(3) and 23 of the State Act on false premise and the said amount is now pending deposit on the file of the Principal District Court in L.A.O.P.No.25 of 2018.

4. On 24.10.2017, the petitioners filed writ petition in W.P.No.27381 of 2017 before this Court, and on 14.06.2018, another W.P.No.14869 of 2018 was filed to quash the Award dated 30.09.2017 and to direct the respondents to pay the compensation as per the Central Act of 2013. On 03.08.2022, this Court disposed of the Writ Petitions and directed the authorities to pass the final Award as per the Central Act within the period of two weeks from the date of receipt of a copy of the order, which was dispatched to the respondents on 11.11.2022. Thereafter, from 25.10.2022 to 15.12.2022, the petitioners have made various representations, requesting the Land Acquisition Officer/District Revenue Officer to pass the final Award as directed by this Court.

5. On 10.03.2023, the petitioners have filed Contempt Petition in Cont.P.No.2865 of 2023 to punish the respondents for not complying with the order dated 03.08.2022 passed in the said Writ Petitions. The respondents falsely stated before the Court that they had complied with the order of this Court, dated 03.08.2022 and the learned counsel for the petitioners also falsely ratified the same without any instructions from the petitioners. Only on 30.05.2023, the

Page No.6/74



W.P.No.35385 of 2023

alleged final Award, for Rs.1,64,63,794/-, dated 15.09.2022, was sent by Registered Post, to the petitioner and thus, the date of the Award is only 30.05.2023. In the final Award, the respondent/DRO worked out the compensation arbitrarily without considering the criteria that are mandated to have been considered for arriving at the compensation, thereby depriving illegally a huge amount of compensation which the petitioners are legally entitled to. Aggrieved by the same, the petitioners have filed the present Writ Petition on 11.12.2023.

6. Further, as per the amended prayer in the present Writ Petition, the petitioner challenge the Award dated 15.09.2022 passed by the first respondent on the ground that the impugned Award has been passed without adding 12% interest in addition to the market value of the structure. According to the petitioners, the said G.O.Ms.No.29, dated 24.01.2019 has not been notified, nor communicated to the petitioners in any manner and the petitioners are not aware of the said G.O. In fact, the cost of structure was included in calculating the additional compensation for applying 12% interest in the interim Award dated 30.09.2017. But while passing the final Award, dated 15.09.2022, the first respondent worked out 12% interest for additional compensation as mandated under Section 30(3) of the Central Act, without including the market value of the building while arriving at the market value of the lands under Section 26(1) of the Central Act, despite the definition of the land under Section 3(p) which

Page No.7/74



W.P.No.35385 of 2023

clearly mandates that the word "land" coming under the Act, shall include the structure attached to the land. While the Central Act being so, and occupying the field for applying 12% interest on the market value of land under Section 26(1) read with Section 3(p) of the Central Act, the State Government, without authority or power, illegally invoked Article 162 of the Constitution of India and passed the impugned G.O.Ms.No.29, thereby denying the petitioners' right to get the additional compensation under Section 30(3), by applying 12% interest on the market value under Section 26(1) calculated including the cost of structure also. As the petitioners were not aware of the impugned G.O. at the time of filing the present Writ Petition, the prayer is now sought to be amended.

7. Further, it is stated by the petitioners that the very purpose or intent for providing 12% interest on the market value on the basic rates of the lands, would apply to the structure also. Hence, it is illogical to allow 12% interest only for the base land and deny the same for the structure thereon. Whether it is land or structure, the market value is to be arrived at only on the date of notice, i.e. under Section 15(2) of the State Act. When once the said notice is issued, the petitioners' right to sell the property is barred. Therefore, denial of 12% interest under Section 30(3) for the structure mis-interpreting the provisions under Sections 26 and 30(3) by invoking Article 162 of the Constitution of India, is illegal and hence, G.O.Ms.No.29 is liable to be quashed.

8. The statute provides for payment of compensation only on the date of

Page No.8/74



W.P.No.35385 of 2023

Award and also provide for compensation to be paid before taking possession.

Section 30(3) provides for 12% interest for delay in making compensation after passing of the Award. The quantum of compensation is arrived at by way of Award only subsequent to initial notice, normally, it takes a minimum of two years. In this case, it has taken one year for interim Award and six years for final Award. The calculation is done by taking the market value as obtained on the date of initial notice and hence, it is just and necessary to provide interest for the market value from the date of initial notice to the date of passing of the Award and the date of payment. Therefore, the interest towards the land and structure suffer the same manner and hence, interest of 12% shall be applied for values of both the base land and structure standing thereon, as Section 3(p) of the Act of 2023 (New Land Acquisition Act) makes it clear that the land includes the structure also.

9. The basis or reasons to include the land for 12% interest under Section 30(3) of the Act, would also apply for the structure and hence, there is no basis to deny the said application of 12% interest on the cost of the structure. The classification of the lands as base land and structure, is without any rational basis and has no rational nexus with the object sought to be achieved and hence, reduction in value of compensation without sanction/authority of law is not only arbitrary, but also violative of Article 300-A of the Constitution of India. Therefore, as the petitioners' right to get 'just' compensation applying 12%

Page No.9/74



W.P.No.35385 of 2023

interest under Section 30(3) of the Central Act, for structure under the Central Act having been abridged due to the impugned G.O., the petitioners also challenged the G.O.Ms.No.29 by amending the prayer including the challenge to the said G.O.

10. The respondents have filed counter affidavit stating as follows:

(a) The first respondent has passed the Award non-arbitrarily and has not violated the provisions of the Land Acquisition Act. The property of the petitioners was acquired by invoking Article 300-A of the Constitution of India. The land in Town Survey No.2/3, Ward No.J, Block-No.29 of Maraveneri Village, Salem, owns an extent of 0.0140.5 square meter, owned by K.Indira, wife of the first petitioner. The property lies within the limit of Salem City Municipal Corporation. It is admitted that the old Ward No.B was not classified as J-Ward in Survey Records. The property is located in the commercial area and it is ascertained from the records of Salem Corporation that the said Indira, wife of the first petitioner, died on 13.08.2021. All the petitioners are the legal heirs of the deceased Indira. It is admitted that an extent of 80 Square Meters, was acquired out of the above mentioned property, for the purpose of constructing an over-Bridge in lieu of Railway Level Crossing No.184 (Mullu Vadi Gate). Regarding the rent that is paid by the Axis Bank, the same has to be proved by the petitioners.

Page No.10/74



W.P.No.35385 of 2023

(b) A Notification under Section 15(2) of the Tamil Nadu Highways Act (State Act) to acquire an extent of 0.0140.5 was published in the Tamil Daily on 18.07.2016. Later, an Errata was issued to acquire an extent of 80 Sq.,Metr alone. The New Land Acquisition Act, i.e. Act of 2013 (Central Act) came into force from 01.01.2014, and Section 15(2) Notification under the Tamil Nadu Highways Act lapsed. Regarding the compensation and other aspects, the same were discussed in the final Award and orders are accordingly passed.

(c) The Award enquiry was conducted on 30.08.2017. The petitioners raised objections on various grounds, which were not considered to be valid. As contended by the petitioners, adjacent Ward market rate could not be taken for fixing the land value. An interim Award was passed on 30.09.2017 in Roc.No.1118/2013/B3, dated 30.09.2017. The petitioners made representation on 12.09.2017 and since the petitioners refused to receive the compensation amount, the same was deposited in Sub-Court, Salem. Thereafter, on the request of the petitioners, the interim Award amount was released to the petitioners and they have received the same. The final Award was passed with reference to New Act, as directed by this Court in W.P.No.27381 of 2017 on 03.08.2022. The interim Award was passed on 10.09.2017, but the petitioners stated that the interim Award was restrained by this Court. The first respondent filed counter affidavit before this Court and this Court passed orders on 03.08.2022 directing the respondents to pass final Award within two weeks from

Page No.11/74



W.P.No.35385 of 2023

the date of the order, according to the New Act, of 2013. Accordingly, final Award was also passed. The respondents did not act arbitrarily, as contended by the petitioners and as per the said interim Award dated 30.09.2017, the value of structure/land, 30% of solatium and 12% additional compensation were granted. No ante-dated, i.e. 30.09.2017 order is passed by the respondents as contended by the petitioners. There is no intention to defeat this Court's order dated 25.10.2017 and before passing this Court's order, the respondents passed the Award and hence, this could not be ignored.

(d) Due to administrative reasons, the copy of the Award could not be sent to the petitioners. There is no abnormal delay in serving the Award for the reasons stated supra. The contention of the petitioners is quite absurd and the reasons for the delay in serving the Award, are explained above. The petitioners presumed wrongly and after the Award, enquiry of Award may be passed on any day by the respondents. It is only a desk work and the Award is passed legally and there is no contempt of this Court's order and the Award amount was deposited in the Court, since the petitioners refused to receive the compensation amount.

(e) It is admitted that the Award proceedings were served on the petitioners on 26.10.2017 through the Village Administrative Officer (VAO) and during the Award enquiry, it was well informed that the petitioners were not willing to receive the compensation amount, and the same was deposited in Sub-

Page No.12/74



W.P.No.35385 of 2023

Court, Salem. Aggrieved by the interim Award proceedings, the petitioners filed a writ petition in W.P.No.14869 of 2018 and as per this Court's order, the final Award was passed according to the New Act in respect of all writ petitions.

(f) The original owner of the property is dead and hence, her husband, two daughters and one son, as legal heirs of the deceased, became the owners of the property. It is admitted that this Court in W.P.Nos.27381 of 2017 and 14869 of 2018, passed common order on 03.08.2022, directing the respondents therein to pass final Award within a period of two weeks from the date of receipt of this Court's order. The first respondent accepted to pass final Award and appeared in the Court on the date of pronouncement of orders by this Court. The petitioners sent various representations and the grievances of the petitioners were considered and final Award was passed for Rs.85,24,728/- in Roc.878/B4/2022 in Na.Ka.No. (Award No.04/2017 (L.C.184)), dated 15.09.2022 and the total compensation amount is Rs.1,64,63,794/-.

(g) The final Award was passed by the first respondent on 15.09.2022. Regarding Cont.P.No.2865 of 2022, the first respondent appeared before this Court and explained the reasons for the delay in complying with the Court order. The petitioner's Lawyer Mr.Arun Kumar intimated about the Court's order and then final Award was passed by the first respondent on 15.09.2022 as per the Central Act. There is no need for the first respondent to pass the final Award by putting ante-date. Since the petitioners did not turn up to receive the final

Page No.13/74



W.P.No.35385 of 2023

Award amount of Rs.85,24,728/-, the petitioners were informed lastly on 25.01.2023 to receive the Award amount. Before that, the petitioners tried to contact over phone, but they could not be contacted and there is no need to cause delay in passing the final Award. A copy of the Award was also sent by Post and also informed over phone. On receipt of intimation from the petitioners' Lawyer, final Award was passed and there is no delay on the part of the first respondent. The reasons for the delay in passing the final Award is explained above and the first respondent did not pass the final Award with ante-date. The date of the letter mentioned might have been a typographical error. The respondents deny the other allegations, since they are all false. The final Award was passed and the compensation amount was also received by the petitioners. The petitioners admitted that the first respondent replied to the representations of the petitioners. The delay in despatching the letters, is due to administrative reasons which could not be explained in detail. The Award passed is as per the order of this Court under Central Act of 2013 and after receiving the Award amount, there is no reason to blame the respondents. All the allegations raised by the petitioners are vague and repeated.

(h) The respondents could act only according to the publication of the Notification under Section 15(2) and likewise, the respondents could act according to the directions of this Court and since the land owner refused to receive the compensation amount, the same was deposited with the Sub-Court,

Page No.14/74



W.P.No.35385 of 2023

Salem. Only on the request of the land owners, the deposited amount was released from the Court and received by the land owners. The calculation sheet will not be available because, the concerned officials calculated the various amounts, in a separate sheet.

(i) In the final Award, break-up details are furnished and the first respondent could not act according to their whims and fancies and she can act according to the New Land Acquisition Act. The Award enquiry date may be postponed by a Land Acquisition Officer and the interim Award and final Award were passed under the State and Central Act and the land value would be fixed by the Land Acquisition Officer. The interest is calculated from the date of Notification and the date of passing the Award enquiry conducted as per the Act by the Land Acquisition Officer. The value of the acquired land is fixed according to the Central Act only and compensation and interest were also worked out accordingly. The land value is fixed considering the market value and the guideline value. The highest rate found in two categories of land value, was fixed. Apart from that, the land classification was also taken into account for the purpose of fixing the value of the land. The land value is fixed according to the State and the Central Acts. The market value is fixed taking into account the sales that had taken place in the locality of the acquired lands and the guideline value is adopted as per the Act. The guideline value could be updated only by the Registration Department. Hence, the guideline value of Rs.6,000/- is fixed on

Page No.15/74



W.P.No.35385 of 2023

the square feet basis. .

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(j) This Court, by order dated 03.08.2022, while disposing of W.P.Nos.27381 of 2017 and 14869 of 2018, directed the first respondent to pass the final Award based on the New Act, within two weeks from the date of receipt of the Court order and accordingly, the first respondent passed final Award. As to in which locality the sales had taken place at the rate of Rs.9,806/- per sq.ft., is not mentioned by the petitioners. Hence, the contention of the petitioners, was not considered. The respondents 1 and 2 are one and the same person and the second respondent only passed the final Award prepared by her subordinates. The final Award passed by the second respondent is in order and she has not committed any criminal offence. Hence, the second respondent and her officials could not be prosecuted in any aspect. The prayer of the petitioners, is legally not sustainable.

(k) 12% additional compensation for the building structure was calculated and included in the interim and final Awards. According to the Act 12% additional compensation for land and building structure, was calculated and included in both the interim and final Awards. Without knowing the above facts, the petitioners have hastily concluded that the second respondent committed an offence under Section 167 IPC and it is highly condemnable. Hence, the Awards passed by the respondents could not be set aside. There is no reason to prosecute the second respondent. Degrading a responsible officer by the

Page No.16/74



W.P.No.35385 of 2023

petitioners, is not proper. The respondents did not misuse the powers and there is no loss for the petitioners on this aspect.

(l) Further, the acquired portion alone was taken possession and no damage is caused to the remaining portion. The value for the demolished building and enhancement of compensation, was already included in the interim Award. The cost for repairing the remaining portion, could not be paid by the Government.

(m) Both in the interim Award and the final Award, 12% of additional compensation for the period from the date of publication of the Notification under Section 15(2) and upto the date of passing of interim Award and final Award, was calculated and included. According to law, when an award is passed there is no provision to conduct fresh Award enquiries. The second respondent acted according to the New Act and no irregularities were noticed in the final Award and hence, the second respondent has not pronounced the false Award. In both the Awards, solatium and 12% additional compensation were calculated and passed in the Awards and paid to them. The value of building, solatium and 12% additional compensation, were also paid. The second respondent did not violate the provisions of Article 300-A of the Constitution of India. The intention of the petitioners is to punish the second respondent, but there is no mention of the word 'punishment' in the Act. The petitioners accepted the interim Award passed and it is an after-thought on the part of the petitioners to state that the

Page No.17/74



W.P.No.35385 of 2023

provisions of the Act are violated in the interim Award. Since no sale had taken place in the vicinity of the acquired land, the highest market rate was adopted for fixing the land value based on the guideline value.

(n) The cost of the construction of the building and additional compensation are calculated in the Award. According to the directions of this Court, the final Award was passed under the new Act and the said date of passing of the Award is not ante-dated. Every calculation is made from the date of Notification and the date of passing the Award is in order. The fourth respondent approved the Award within the limit of the new Act. The petitioners high-handedly impleading the State level officer as a party, which is not proper.

(o) Further, there is no violation noticed in Sections 26 to 37 of this Act and the petitioners themselves admitted that no sale had taken place for the past several decades around the acquired land and hence, the highest guideline value is adopted in this acquisition.

(p) The delay in passing the Award is only due to administrative reasons. The second respondent is a District level respected Officer. The petitioners want to prosecute the second respondent under Section 167 IPC, which is highly condemnable. The second respondent has not framed incorrect documents and she acted only according to the Central Act non-arbitrarily.

11. The respondents 1 and 3 to 5 have filed additional counter affidavit

Page No.18/74



W.P.No.35385 of 2023

stating as follows:

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(i) The Government Order under challenge has been issued in the form of executive instructions for clarification on the calculation of 12% additional market value under Section 30(3) of the New Land Acquisition Act of 2013. It has been clarified by the Government that additional market value @ 12% shall be applicable only on the basic market value on the land as determined under Section 26(1) of the said Act of 2013.

(ii) The determination of compensation under 2002 State Act has been calculated as mandated under Schedule-I of the Central Act 30 of 2013. The compensation amount has to be determined in accordance with the First Schedule which contains only references to Sections 26, and 30(2) of the Central Act 30 of 2013. The components mentioned in the First Schedule are:

- (a) market value of the land under Section 26
- (b) multiplication factor
- (c) value of assets attached to land or building
- (d) solatium, and
- (e) market value in case of rural areas.

The provision for the additional amount calculated at the rate of 12% is given under sub-section (3) of Section 30 of the Central Act 30 of 2013. But a reading of the provisions of the Central Act 30 of 2013 requires payment of the amount mentioned under Section 30(3), which is applicable to the provisions of the 2002

Page No.19/74



W.P.No.35385 of 2023

State Act.

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(iii) A reading of Section 30 will show that the provision for solatium is divided into three separate parts. Section 30(1) deals with solatium and an amount of one hundred percent of the compensation amount is to be paid as solatium. The amount is therefore to be paid after the Collector has determined the total compensation to be paid under Sections 27, 28 and 29 of the Central Act 30 of 2013. Section 30(2) deals with the issue of the individual Awards. Section 30(3) deals with the payment of additional amount at the rate of 12% per annum. Although a part of provision named 'award of solatium', this provision is in fact a separate and stand-alone provision. The payment of the "amount" has to be calculated from the date of 'Social Impact Assessment' under Section 4 of the Central Act 30 of 2013, however, Section 4 is not applicable to the Tamil Nadu Highways Act, 2001 (with effect from 2002), since no Social Impact Assessment is conducted in acquisitions under the said State Highways Act. As such, this amount is paid from the date of issuance of preliminary Notification under Section 15(2) of the 2002 State Act. Section 30(3) clearly states that the additional amount is payable in addition to the market value of the land and is calculated as a percentage of market value. There is a clear distinction between 'market value' and 'compensation' per-se, the market value of the land is determined under Section 26 of the Central Act 30 of 2013.

Page No.20/74



W.P.No.35385 of 2023

(iv) A reading of Section 26 fortifies the object and reasons provided in the impugned Executive instruction, dated 24.01.2019, leaving out the structures present on the land in calculation of 12% additional amount, as nowhere in Section 26 of the Central Act of 2013, it speaks about the structure/buildings in determination of the market value of the land. The value of the assets attached to the land, has been dealt with separately in Section 29 of the Central Act 30 of 2013.

(v) Section 27 provides that the Collector, having determined the total market value, will proceed to determine the compensation as per Section 28 of the Act. Further, in determination of the compensation under the First Schedule provides for value of assets attached to land/building as a separate component. Hence, a reading of the above mentioned Sections would lead to the conclusion without any ambiguity that the 'amount' stipulated under Section 30(3) which has to be awarded only on the market value of the land as determined under Section 26 excluding the structures/buildings present on the land.

(vi) The petitioners have contended that the definition of the 'land' under Section 3(p) of the Central Act 30 of 2013, shall include the structure attached to the land. The contentions of the petitioners are based on the misunderstanding of Section 3(p) of the Central Act 30 of 2013. A reading of Section 3(p) clearly shows that the structure is nowhere mentioned explicitly in the definition of the 'land' under Section 3(p), since the structure is not included in determination of

Page No.21/74



W.P.No.35385 of 2023

the market value of the land under Section 26 of the Central Act 30 of 2013.

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(vii) Since the 'land' is defined in Section 3(p), which in its opening part, uses the phrase "unless the context otherwise requires", the definition obviously cannot be read in isolation. The phrase "unless the context otherwise requires" is meant to prevent the person falling into the whirlpool of 'definitions' and not to look to the other provisions of the Act, which necessarily has to be done as the meaning mentioned to 'definition' can be adopted only if the context does not otherwise require. The above understanding has been stated by the Apex Court, in the case of *Vanguard Fire and General Insurance Co. Ltd., Madras, Vs. Fraser Ross* (reported in AIR 1960 SC 671). The interpretation of the Apex Court in this case, has also been upheld in *K.Balakrishna Rao and others Vs. Haji Abdulla Sait and others* (reported in AIR 1980 SC 214 = 1980 (1) SCC 321). Further, the Supreme Court in the case of *Ramesh Mehta Vs. Sanwal Chand Singhi* (2004 (5) SCC 409), held that a definition is not to be read in isolation and it must be read in the context of the phrase which would define it and that it should not be vague or ambiguous that the definition of words must be given a meaningful application and that where the context makes the definition given in the interpretation clause inapplicable, the same meaning cannot be assigned. Further, the Supreme Court, in the case of *K.V.Muthu Vs. Angamuthu Ammal* (reported in 1997 (2) SCC 53) held that, "while interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not

Page No.22/74



W.P.No.35385 of 2023

repugnant to the context, it should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted. It was further held in that decision by the Apex Court that, "where the definition of expression, as in the instant case, is preceded by the words "unless the context otherwise requires", the said definition set out in the section is to be applied and given effect to but this rule, which is the normal rule may be departed from if there be something in the context to show that the definition could not be applied".

(viii) Therefore, it is clear that the qualifying words, such as "unless the context otherwise requires" whittles down the effect of the restrictive nature of the word "means" and broadens the scope of the word defined under the various sections or clauses to suit the context in which it is used in the Central Act 30 of 2013. Therefore, the contention of the petitioners that the land as defined in Section 3(p) of the Central Act 30 of 2013, includes the structure value, is void and devoid of merits.

(ix) The petitioners have contended that the structure has been included in calculation of 12% additional amount in the interim Award, dated 30.09.2017, but has been left out in the final Award, dated 15.09.2023. The interim Award has been pronounced as per the determination of compensation as per 1894 Land Acquisition Act and hence, the structure has been included in the

Page No.23/74



W.P.No.35385 of 2023

calculation of 12% additional amount. The 2002 State Act has been validated by the Validation Act of 2019, wherein the 1894 Land Acquisition Act cease to apply and the compensation under the 2002 State Act had to be determined only as per Schedule-I, II and III of the Central Act 30 of 2013. As such, the Executive instruction dated 24.01.2019 has been issued in line with the provisions of the Central Act 30 of 2013. As stated above, the structure has not to be taken into account and only market value as determined under Section 26 of the Central Act 30 of 2013, has been taken into account for calculation of 12% additional amount. Hence, the final Award has been passed and compensation determined as per the Central Act 30 of 2013 wherein the interim Award amount determined as per the provisions of 1894 Act, has been deducted and the balance amount has been paid to the petitioners. The reliance placed by the petitioners on the decision of this Court, in W.P.No.10206 of 1992, dated 07.12.1994 (Lakshmi Rama Pandiraj Vs. State of Tamil Nadu) is not sustainable, as the 1894 Land Acquisition Act, has been repealed for determination of compensation under the 2002 State Act. Hence, the contention of the petitioners is false and not in accordance with law.

(x) The Kerala High Court, in the case of *Poyyeri Rarukutty and others Vs. Special Tahsildar and Land Acquisition Officer* (AIR 1973 Kerala 254), held that the facts of the case require a different method of valuation that can be resorted to, and in the light of the decision of the Supreme Court in AIR 1970 SC 564 at Page No.24/74



W.P.No.35385 of 2023

pp.609 and 610 (Rustom Cavasjee Coopere Vs.Union of India), in paragraph 103, it is stated that the property to be acquired has ordinarily to be valued as a unit and normally, an aggregate of the value of different components will not be the value of the unit. Further, it was held by the Apex Court in that decision that, "if the capitalization method of valuation is not a fair means of determination, the value in some cases, valuation of land and building as separate units and aggregating the two values cannot be said to be illegal. Which method of valuation is suitable or appropriate to a given case is always a matter for the Land Acquisition Officer and Court to decide. The Law requires payment of compensation on the basis of the market value. Various methods of determining the valuation are only helpful to find out the fair market value and that is why the Supreme Court in the latest decision in AIR 1972 SC 1417 (Tribeni Devi and others Vs. Collector of Ranchi) emphasised that the Court may have a resort to more than one method in arriving at the market value of land.

(xi) The Government Order dated 24.01.2019 has been issued as per Section 30(3) of the Central Act 30 of 2013 and hence, the above Executive instruction is legal and valid under the provisions of the 2002 State Act. The 1894 Land Acquisition Act had been repealed by introduction and implementation of Central Act 30 of 2013. The determination of compensation under 2002 State Act had been computed based on Schedule-I of the Central Act 30 of 2013 and as contended by the petitioners, 1894 Act cannot be taken into

Page No.25/74



W.P.No.35385 of 2023

consideration for calculation of 12% additional market value with inclusion of structures. The 12% additional amount contemplated under Section 30(3) of the Central Act 30 of 2013 is not given for delay in paying the compensation as contended by the petitioners, since the delay in payment of compensation had been dealt with in Section 80 of the Central Act 30 of 2013. This 12% additional amount is a stand-alone component in the land acquisition Award determined under the Central Act, which is the solatium given to the land owners for acquisition of their property. The Central Act 30 of 2013 had been enacted by the Parliament to have a right to fair compensation and transparency in land acquisition process. The contention of the petitioners in the amended prayer is ultra-vires the provisions of the Central Act 30 of 2013, the validation Act of 2019 and the 2002 State Act that inclusion of the structures in calculation of 12% additional market value in the Act and the Government Order challenged by the petitioners had been derived under Section 30(3) of the Central Act 30 of 2013 and hence, the Government order does not suffer from any unconstitutionality.

12. The first respondent has filed additional counter affidavit stating as follows:

(a) The Commissioner of Land Administration, Chennai, has given detailed instructions in the Circular No.M2/7304/2013, dated 16.10.2020 for determination of market value as follows:

Page No.26/74



W.P.No.35385 of 2023

(i) Fixation of land value: The criteria for determination of market value of land by the Collector has been explained in Section 26 of the Act of 2013 in detail and the manner for calculating the multiplier factor, solatium and other components, if any, to be determined for payment of compensation to land owners, are provided in the First Schedule of the Act.

(ii) In case of acquisition of a linear field, along an existing road: In case of acquisition of a linear field along an existing road (for example: construction of ROB/RUB, formation of linear service road and road widening etc.,) 400 meters width on either side of the Central line of acquisition field shall be considered as a constant distance. Along with the length of the acquisition field, it will be considered as a corridor to form the nearest vicinity area. If there are no sale value available for similar type of land within the length of 400 meters distance from the centre point of acquisition field, then all the sales for similar type of land up to the length of 800 meters from the centre point of acquisition field shall be taken up for consideration towards determination of market value. Likewise, this exercise has to be done up to 1.6 km. radius from the centre point of acquisition field, shall be taken up for consideration towards determination of market value. Likewise, this exercise has to be done upto 1.6 km radius from the centre point of acquisition field. Any acquisition field which is greater than 1.6 km in length, will be split into segments of 1.6 km. for this purpose.

(iii) Fixation of multiplier factor: As per Sl.No.2 in Schedule-I of the Act,

Page No.27/74



W.P.No.35385 of 2023

the market value shall be multiplied by the factor "1.00" whenever the land proposed for acquisition is situated in urban areas. In this connection, the following areas are to be treated as urban areas which have been defined in Rule 2(n) of the Tamil Nadu Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2017. The acquired land falls in urban area. In these urban areas, the multiplier factor shall be applied as 1.00 for multiplying the market value of the land.

(iv) Solatium: As per Section 30(1) of the Act of 2013, the Collector, having determined the total compensation to be paid, shall, to arrive at the final Award, impose a 'solatium' amount equivalent to 100% percent of the compensation amount and as per Sl.No.5 of the First Schedule of the New Act, the solatium equivalent to 100% of the total value of (i) market value of land multiplied by the multiplier factor, (ii) structure and (iii) trees had to be worked out to pay the monetary compensation.

(v) 12% additional market value: In G.O.(Ms)No.29, Revenue and Disaster Management Department, dated 24.01.2019, it is stated that, "12% additional market value under Section 30(3) of the New Act of 2013, shall be applied only on the basic market value of land as determined under sub-section (1) of Section 26 of the New Act of 2013. The calculation is as follows:

<i>Calculation Sheet</i>
T.S.No.J/29/2



W.P.No.35385 of 2023

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Calculation Sheet		
Sl. No.	Details	Amount in Rs.
1	Land Value of 80 Sq.Mtrs. at Rs.64590.00 per Sq.Mtr	5167200.00
		5167200.00
2	Multiplier 1.00 (for urban areas)	2374520.00
3	Value of structures	
4	Value of trees	7541720.00
5	Total (Sl.No.2+3+4)	7541720.00
6	Solatium 100%	15083440.00
7	Total (Sl.No.5 + Sl.No.6)	
8	12% Addl. compensation for basic land value for (813 days) (for Sl.No.1) i.e.	1380353.72
		16463793.72
9	Total compensation (Sl.No.7 + Sl.No.8)	10894071.00
10	Already amount paid by interim Award	5569722.72
11	Balance amount for final Award calculation	501275.04
12	9% interest from 09.10.2018 to 08.10.2019 (365 days)	192269.88
		835458.41
13	15% interest from 09.10.2019 to 31.12.2019 (84 days)	835458.41
14	15% interest from 01.01.2020 to 31.12.2020 (366 days)	590543.20
		8524727.66
15	15% interest from 01.01.2021 to 31.12.2021 (365 days)	8524728
16	15% interest from 01.01.2022 to 15.09.2022 (258 days)	
17	Grand Total (Sl.No.11+12+13+14+15+16)	
	Rounded off Sl.No.17	

(vi) Additional market value: Note: 12% additional market value is only applicable for basic market value of land under Section 26(1) (not applicable for



W.P.No.35385 of 2023

multiplier factor value and also values of structures and trees) 12% additional market value only on basic market value of land under Section 26(1) from the last date of publication of preliminary Notification to the date of passing Award.

(vii) In the Government Letter No.15319/HN2/2017-3, Highways and Minor Ports Department, dated 18.05.2018, the Chief Secretary to Government has issued instructions stating that 12% additional market value per annum on the compensation amount will be paid as per Section 30(3) of the Act of 2013 from the date of Section 15(2) Notification till the date of possession or date of final Award, whichever is earlier. Like the above illustration, the 12% additional market value is calculated to the petitioner's land as follows:

Market value for 80 Sq.Mt. of at Rs.64590.00 per Sq.Mt. (80 x 64590)	5167200.00
12% additional compensation for basic land value for (813 days) (for Sl.No.1), i.e. 18.07.2016 to 31.12.2016 (167/366)	282925.38
01.01.2017 to 08.10.2018 (possession date) (646 / 365)	1097428.34
Total 12% additional market value	1380353.72

The total Award amount received by the petitioners as per the Act of 2013, is as follows:

(i) Interim Award : Rs.1,08,94,071/-

(ii) Final Award (including 9% and 15% interest) : Rs. 85,24,728/-

As per the Act of 2013, the Final Award is awarded and ECS also done.



W.P.No.35385 of 2023

WEB COPY (viii) The petitioners filed W.P.Nos.27381 of 2017 and 14869 of 2019 praying to fix the compensation as per the Act of 2013 before this Court and in those Writ Petitions, common order was passed on 03.08.2022, with direction as follows:

"Per contra, learned Advocate General appearing on behalf of the respondents submitted that, though the Interim Award under challenge was passed under the Old Act, however, the interim payment was made on 30.09.2017 under the new Act and the land value has been calculated by invoking the provisions contemplated under New Act."

"In view of the aforesaid stand taken by the learned Advocate General, as the respondents have decided to pass the Final Award by invoking the provisions contemplated under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (New Act), the prayer sought for in these Writ petitions have become infructuous and no further order is necessary in these petitions. Further, this Court issues direction to the respondents to pass the Final Award in terms of the New Act, within a period of two weeks from the date of receipt of a copy of this order, after affording an opportunity to the petitioners to canvass all their grievances."

(ix) The sale deed mentioned by the petitioners in Doc.No.666/2016 is not valid as per the Central Act Section 26(3), since this land is located 2.00 km. away from the proposed Road Over Bridge (ROB) location in Omalur Main Road.



W.P.No.35385 of 2023

Hence, the value is not taken for consideration and the respondent(s) had acted in accordance with the law for fixing of the market value of the land. According to the directions of this Court, the first respondent passed Final Award and compensation given to the land owners.

(x) Later, the petitioners filed Contempt Petition No.2865 of 2022 before this Court to punish the respondents for wilfull disobedience of the order dated 03.08.2022 passed by this Court in W.P.No.14869 of 2018. When the matter is taken up for hearing, the learned Government Advocate appearing for the respondents/contemnors submitted that the order under contempt has been complied with. Learned counsel for the petitioners also ratified the same. Recording the above submission of the learned Government Advocate, the Contempt Petition was closed. In addition to that, the petitioners submitted claim for higher compensation, which was sent to the Principal District Judge, Salem, by the first respondent in his letter Roc.No.424/2024/B4, dated 16.06.2023. This petition is pending with Principal District Judge, Salem. Subsequently, the petitioners filed this Writ Petition before this Court. The petitioners continuously filed writ petitions before this Court for the same prayer after receiving the entire compensation amount, which is motivated to threaten the Government officials and the petitioners wantonly filed this Writ petition, which may be dismissed.



W.P.No.35385 of 2023

13. The fifth respondent has filed counter affidavit stating as under:

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(a) The Government Order under challenge has been issued in the form of Executive instructions for clarification on the calculation of 12% additional market value under Section 30(3) of the Act of 2013. It has been clarified by the Government that additional market value @ 12% shall be applicable only on the basic market value on the land as determined under Section 26(1) of the Act of 2013.

(b) Determination of compensation under 2002 State Act, has been calculated as mandated under Schedule-I of the Central Act of 2013 and the compensation amount has to be determined in accordance with the First Schedule which contains only references to Sections 26, 29 and 30(1) of the Central Act 30 of 2013. A holistic reading of the provisions of the Central Act 30 of 2013 requires payment of the amount mentioned under Section 30(3) of the Central Act 30 of 2013 and Section 30 of the Central Act 30 of 2013 is applicable to the provisions of the 2002 State Act.

14. The petitioners have filed rejoinder to the counter affidavit filed by the first respondent, stating as follows:

(i) The averments of the second respondent as "Awards passed according to the Act, if anything found wrong on the part of the official, this Court may pass orders," are totally irresponsible and reckless statements made by refusing

Page No.33/74



W.P.No.35385 of 2023

to follow the Rule of Law, despite the mistake being pointed out, which conduct of the second respondent is unbecoming of a Government servant.

(ii) The averments made by the second respondent that it is none of the business of the first respondent to look into upgrading the value of the guideline values which is to be done by the Registration Department, are reckless and irresponsible statements made therein and the first respondent failed to even read the third proviso to Section 26 of the 2013 Central Act. The conduct of the second respondent is nothing but unbecoming of a Government servant and also amounting to belittling the authority of this Court and hence, the second respondent is not entitled to continue as a public servant even for a single day.

(iii) The averment of the second respondent that the Government cannot pay for repairing the remaining building and is not responsible for the loss of rent, is yet another irresponsible and reckless statement made, that too even without looking into the provisions under Section 28 of the 2013 Central Act, despite the said provision being specifically stated in the petitioners' affidavit in Ground (k).

(iv) The averment that the first respondent need not communicate the Award immediately after passing of the Award, not required to pass the Award on the day of the Award enquiry in the presence of the land owners and can pass the Award on any subsequent day, as it is a desk work, is false statement made contrary to the mandate of the statute before this Court to distort the

Page No.34/74



W.P.No.35385 of 2023

course of justice. Therefore, the second respondent is liable to be punished for criminal contempt of this Court and perjury.

(v) Therefore, the above averments prove that the second respondent neither bothered about the statutory provisions, nor bothered to ensure the averments made before this Court, nor care for the welfare/sufferings of the citizens and hence, she is unfit to hold any Government office and hence, should be restrained from functioning in any capacity under the State.

(vi) 12% additional compensation under Section 30(3) of the Central Act:

The petitioners alleged in the affidavit filed in support of the Writ Petition that 12% additional compensation mandated under Section 30(3) of the 2013 Central Act, has not been applied for the cost of structure in the lands acquired, while passing the final Award. The second respondent, without examining the correctness of the final Award, brazenly stated falsely that the Award has been passed as per the Act and challenges this Court to pass orders if found wrong. Thus, the second respondent in refusing to correct her mistake, despite the notice of this Court, shows that she had passed the final Award falsely, wilfully and wantonly with ill-intention to reduce the compensation and to cause financial loss to the petitioners, thereby committed the offence punishable under Section 167 IPC.

(vii) The second respondent, a public servant, being the Award passing authority, thereby having dominion over the public exchequer, disobeyed the

Page No.35/74



W.P.No.35385 of 2023

direction of the law in calculating the final Award as aforesaid, because of which the Government is now forced to pay 12% interest unnecessarily from that date of Award to the date of payment, which is gross loss caused to the State exchequer by the second respondent and hence, the second respondent has committed an offence of Criminal breach of trust punishable under Section 409 IPC, since the post conduct is relevant as per Section 8 of the Indian Evidence Act, the wilfull intention to disobey the law is glaring on the face of record and hence, the second respondent is liable to be prosecuted for the said criminal offences committed by the second respondent.

(viii) As per law, 12% additional compensation is to be paid by way of interest on the cost of the land per-se acquired and also on the cost of structure standing on the said acquired lands from the date of initial Notification, i.e. Section 15(2) notice dated 18.07.2016 to the date of Award or date of possession, whichever is earlier. Here, the date of possession is 08.10.2018. Land cost stated in the final Award is Rs.51,67,200/- and the cost of structure stated in the final Award is Rs.23,74,520/-. 12% additional compensation had been worked out for the period from 18.07.2016 to 08.10.2018. The number of days from 18.07.2016 to 08.10.2018 is 812 days. Under row No.18, in the impugned order-Final Award, the 12% has been applied only on the land cost shown at Column 10, i.e. Rs.51,67,200/- and the 12% additional compensation calculated in the final Award is Rs.13,80,354/- which is the result of 12% interest applied

Page No.36/74



W.P.No.35385 of 2023

only on the land cost of Rs.51,67,200/- and the 12% additional compensation for the structure cost of Rs.23,74,200/- would be $\text{Rs.23,74,200-} \times 12\% \times 812 / 365 = \text{Rs.6,33,814/-}$ and if taking 366 days for a year, it would be Rs.6,32,082/-.

(ix) Admittedly, the second respondent had not included the cost of structure for the 12% additional compensation as alleged. The second respondent refused to accept the said glaring error, despite the same is pointed out and which came before this Court in apologetic manner and brazenly made false pleadings in the counter affidavit, claiming that she calculated 12% additional compensation also on the cost of the structure. This patently false statement made under oath is to mislead this Court and hence, she is liable to be prosecuted for perjury. The defiant attitude of the second respondent shows that she has made the false averments wantonly demeaning the Rule of law and this Court.

(x) Without intimating the passing of an Award and serving the Award to the petitioners, the allegation that the petitioners refused to receive the Award is false statement made by the second respondent to mislead the Court.

(xi) The second respondent suppressed the date on which the interim Award amount was deposited with ill-intention to defeat the interim order of this Court, dated 25.10.2017 and hence, this is gross interference in the administration of justice.

(xii) The second respondent falsely claims in the counter affidavit that she



W.P.No.35385 of 2023

did not delay the communication of the final Award by pleading that she sent the Award by post and informed over phone, is false. As per Section 37(2) of the Central Act, she is duty bound to communicate the Award immediately after passing of the Award. But she sent the Award by post after eight months which was received by the petitioners only on 30.05.2023. No information over phone was given to the petitioners by any one including the second respondent as to passing of the Award.

(xiii) The contention of the second respondent/deponent that she passed the interim Award actually on 03.09.2017 and not ante-dated to defeat the interim order of this Court, dated 25.10.2017, is false and hence, this Court may call for the relevant file from the first respondent relating to passing of interim Award and ensure the ante-dating of the interim Award and falsity of the averments of the second respondent in the counter affidavit under reply. The second respondent failed to reply that 30.09.2017 was a holiday and it was Vijaya Dhasami day and no public office would function on that day. But the second respondent claims falsely that the interim Award was passed on that day. Therefore, this is nothing but giving false evidence attracting punishment under Section 193 IPC. Further, the second respondent is acting in contravention of the 2013 Central Act, which would also attract punishment under the said Act.

(xiv) The second respondent, by circumventing the interim order of this Court, dated 25.10.2017, thereby restraining the first respondent from

Page No.38/74



W.P.No.35385 of 2023

proceeding further to pass the Award, ante-dated, the interim Award without sanction of any law for such interim Award and defeated the interim order, which is patently interference with the administration of justice.

15. The petitioners have filed rejoinder to additional counter affidavit filed by the first respondent, stating as follows:

(i) With respect to the instructions under the caption - in case of a linear field along an existing road:

(a) The petitioners' properties being located on the main State Highway, falls within the ambit of the said caption of the circular. The instruction under the said caption to ignore the sale prices of lands in nearest village but only to take into account the sale prices of lands situated in nearest vicinity is illegal and ultra-vires the Central Act. The Central Act under Section 26(1)(b) mandates to calculate the average sale price for similar type of land situated in the nearest village or nearest vicinity area and to take whichever is higher. The statute does not empower the State to omit the expression "nearest village" and to take on its whims and fancies with ill-intention to reduce the compensation, thereby defeating the mandate of the Central Act and hence, the fourth respondent abused his position and issued the Circular, dated 16.10.2020 in blatant violation of the Central Act. By that misconduct in disobeying the direction of law, the fourth respondent is also liable to be punished under Sections 84 and 85 of the

Page No.39/74



W.P.No.35385 of 2023

Central Act for violating the provisions of the Act.

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(b) Even the said illegal instruction of the Circular has not been followed by the first respondent in passing the Award, as the Award does not disclose the same. Had the instruction been followed, the land cost should have been fixed as Rs.13,000/- per Sq.Ft., taking into consideration the sale prices of the land situated within aerial distance of 500m/1.60 km. as pleaded in the affidavit filed in support of the Writ Petition in paragraphs 14(a) and (b). The first respondent had replied to the same in paragraph 14, but stated under sub-para 14(a)(iii) that highest value will not be taken into account. Further, in paragraph 14(a)(ii), the first respondent pleaded falsely as if the petitioner had not given the locality of the sale took place for Rs.9806/- per Sq.Ft., despite the fact that the sale deed Document number has been furnished, vide the petitioner's representation, dated 12.09.2017. Therefore, the entire conduct of the first respondent is to deny the lawful compensation to the petitioners and making such false averments prove that the first respondent acted intentionally and knowingly.

(c) The circular refers to G.O.350, dated 14.07.2020, wherein the Government of Tamil Nadu accepted the recommendation of the Santhanam Committee in streamlining the land acquisition proceedings and payment of compensation and nowhere the said G.O. recommends any such thing as to the application of 12% interest as additional compensation and hence, it is the artificial invention made by the fourth respondent to issue the said circular

Page No.40/74



W.P.No.35385 of 2023

without authority.

WEB COPY (ii) With respect to the instructions under the caption 12% additional market value:

The circular dated 16.10.2020 directing to apply 12% interest only on the basic land cost and not to apply on the structure on the land is nothing but blatant violation of the definition of land under Section 3(p). Further, the said instruction refers to G.O.29, dated 24.01.2019, in which, the 12% additional value has not been calculated for the value of structures. The said G.O. is liable to be quashed for the following reasons:

(i) the said G.O. mechanically copied the Central Government guidelines issued by the Ministry of Transport and Highways of the Government of India and without applying the mind.

(ii) the logic behind the circular issued by the Commissioner of Land Administration on 13.11.2017 and the long practice carried out in this State under the 1894 Act, right from 1984 has not been taken into consideration and applied.

(iii) the definition of 'land' under Section 3(p) under the 2013 Central Act, includes the structure within the word 'land' and hence, the word 'land' coming under Sections 26(1) and 30(3) would naturally include the structure also.

(iv) The very purpose of providing 12% under Section 30(3) is only to compensate the land owner for the delay in making payment of compensation

Page No.41/74



W.P.No.35385 of 2023

after issuing notice till the date of award or possession, and hence, the loss would be same for the land as well as the structure attached to the earth and hence, purposive interpretation would necessarily include the structure within the word 'land' as defined under Section 3(p) of the Central Act. The valuation of land and structure being taken on the date of initial notice, but subsequent to the of the Award, justice warrants payment of interest from initial notice date to the date of Award for both. Therefore, denying the interest part on the building would make the classification violative of Article 14 of the Constitution of India and render Section 30(3) void, by virtue of operation of Article 13(2) of the Constitution of India. Therefore, such sort of interpretation without taking the whole Act into consideration and purpose therefor, is impermissible.

(v) Therefore, the classification of land as defined under the Act as land portion alone separately and structure/building attached thereto portion separately for the purpose of applying 12% interest under Section 30(3) and applying 12% interest on land portion only and deny 12% on cost of structure, has no valid basis for classification and it defeats the very purpose of 12% interest contemplated. Therefore, the said G.O.29 seeking to make such classification violating the definition of the word "land" under the Act, is void ab initio and liable to be quashed. The petitioners are taking separate action to file a separate petition to amend the prayer in the writ petition and to raise additional grounds.

Page No.42/74



W.P.No.35385 of 2023

(vi) The first respondent/second respondent repeatedly averred before this Court in the earlier counter affidavit that 12% interest as additional compensation, had been worked out even for the structure, but now justified non-payment of 12% interest on the cost of the structures, is a false and reckless statement made before this Court under oath, which conduct makes the fourth respondent unbecoming of a Government servant. Despite having known the misconduct before this Court by making false statements, there is no regret expressed by the first respondent, but brazenly justifies the misconduct, which is impermissible under any civilised society and hence, such person shall not be allowed to continue in public service and therefore, she shall be punished for perjury and criminal contempt of this Court.

(vii) The further contention of the first respondent that the claim of the petitioners had been sent to the learned District Judge, Salem, under Section 64, vide, letter dated 16.06.2023 and is pending on the file of the learned District Judge, is denied and the first respondent is put to strict proof for the same. The first respondent has not sent any copy of the said communication dated 16.06.2023 sent to the learned District Judge, Salem, to the petitioners. Even if the sending of such communication is found to be true, even then, it would be futile exercise as the issues raised herein cannot be decided by the learned District Judge. The petitioners also questioned the date of Award, validity of interim Award, instalment payment of Awards, application of Section 30(3) of the

Page No.43/74



W.P.No.35385 of 2023

Central Act read with Section 3(p) of the Central Act, sustainability of G.O.29, dated 24.01.2019 and the circular dated 16.10.2020, etc., which only this Court under Article 226 of the Constitution of India could decide and not the District Court. This is a case wherein the first respondent passed the impugned Award mechanically without taking into consideration the mandate of the Act with ill-intention to force the petitioners to wander before the Court for years. Therefore, the impugned Award being not the Award passed under the Central Act, the District Court Cannot be approached.

(viii) Apart from the same, the second respondent even failed to follow the circular, dated 16.10.2020, fully in arriving at the compensation, as no such exercise of mapping even the sale prices of nearest vicinity areas that fall within the radius of 80 m / 1.60 km. Instead of simply adopting the guideline value of the year 2012 arbitrarily without bothering about the land owners who lost their lands. Thus, the said Circular had been followed only to reduce the compensation. Thus, the first respondent abused the process of law in passing the Award by committing offences under Sections 167 and 409 IPC with ill-intention to reduce the compensation to the petitioners and even by causing loss to the State.

16. Learned counsel for the petitioners submitted that the petitioners' lands, a portion of commercial building, situated in busy commercial area,

Page No.44/74



W.P.No.35385 of 2023

abutting Salem-Yercaud Road, having an extent of 80 Sq.M. (which was initially notified as 141.00 Sq.Mt., and subsequently reduced to 80 Sq.Mt.) were acquired for constructing a Road-Over-Bridge (RoB) to replace a Railway level crossing. The notices under Section 15(2) of the Tamil Nadu Highways Act, were issued on 02.07.2016 and 18.07.2016. The Award enquiry was held lastly on 30.08.2017. The interim Award was passed on 30.09.2017 under the Tamil Nadu Highways Act, and the interim Award was served on the petitioners on 26.10.2017, which according to the learned counsel, is ante-dated. The possession of the lands, was taken on 08.10.2018. Thereafter, based on the order passed in the earlier Writ Petition in W.P.No.14869 of 2018, on 03.08.2022, the impugned Award was passed on 15.09.2022, which was passed by the authorities without properly following the provisions of law on the subject issue, inspite of the grievances/representations having been sent to the authorities concerned. Learned counsel further submitted that even though the final Award amount was credited to the Account of the petitioners on 17.02.2023, the same was credited only after getting an undertaking from the petitioners to receive the interim Award from the Reference Court. It is also submitted by the learned counsel for the petitioners that the impugned Award was served on the petitioners only on 30.05.2023. It is also submitted that the alleged interim Award was paid to the petitioners only on 20.10.2023, that too after legal battle of the petitioners. It is the bone of contention of the learned counsel that the

Page No.45/74



W.P.No.35385 of 2023

Award was not passed in terms of the Central Act 30 of 2013 (i.e. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013).

17. Learned counsel for the petitioners further contended that non-awarding of 12% Additional compensation as mandated under Section 30(3) of the Central Act 30 of 2013, for the cost of structure due to G.O.Ms.No.29, dated 24.01.2019 issued from Revenue and Disaster Management Department, Land Administration Wing (LA-1(1)) Section and the said G.O. is challenged in this Writ Petition subsequent to the amendment of the prayer made in this Writ Petition.

18. Learned counsel for the petitioners further submitted that the authorities have not determined the market value based on the guideline value as well as taking the average value of the sale prices available in the sale deeds in the near-by village/vicinity for the past three years and taking the higher of the two. According to the learned counsel, this Court may set aside the impugned Award dated 15.09.2022 itself, as the same is not passed in accordance with law. It is also stated by the learned counsel that the authorities have not included the compensation due to the loss of rent to the petitioners and the damages caused due to severing the acquired portions of the building(s) from the remaining structure and to make the remaining structure usable. Actually, the compounding of interest for every six months after one year from



W.P.No.35385 of 2023

the date of taking possession, should have been done by the authorities while passing the final Award.

19. Learned counsel for the petitioners further alleged that the contention of the respondents that the 12% additional value will apply only on the basic market value of the land(s) assessed under Section 26(1) of the Act 30 of 2013 and not on the assets like buildings, trees, crops, etc. , attached to the earth, is not sustainable, because, Section 30(3) of the Act 30 of 2013 provides for 12% additional value, which does not arise in this case, as the provision states that it should apply on the market value determined under Section 26(1) and hence, the market value determined after applying the multiplication factor, would be entitled to be applied for 12% additional value. According to the learned counsel, 12% value shall be applied even after applying multiplying factor. Further, the last proviso to Section 26(3) denotes the phrase "land or property" which makes it crystal clear that Section 26 is only the enabling provision to determine the market value of the base land and the assets attached to the land. The stand of the respondents is that the word "land" mentioned in Section 26(1), shall mean only the base land and it does not include the building, etc., attached to the land(s) and the definition of the "land" under Section 3(p) of the Act 30 of 2013, will not apply to Section 26(1), and hence, the above stand taken by the respondents is untenable, for the reason that if such interpretation is



W.P.No.35385 of 2023

accepted, then there is no other provision under the Act 30 of 2013 enabling the State to determine the market value of the building, which would make the provision unconstitutional, as there cannot be land acquisition without compensating the land owner(s) for the loss they suffer as to the value of the structure/assets attached to the earth. Therefore, the definition of Section 3(p) under the Act 30 of 2013 shall apply to the word "land" occurring under Section 26(1) of the Act 30 of 2013, more so, the context and purpose of the said Act warrants application of the definition of the "land" under Section 3(p) to Section 26(1) also.

20. The learned counsel for the petitioners contended that the argument of the respondents/State that the First Schedule (Section 30(2) of the Act 30 of 2013), under Sl.No.1, deals with the market value of the land, but without including the assets/buildings within the land referred to under Sl.No.1, relying upon Sl.No.4 (dealing with value of assets attached to land or building), which states the value of the assets to be assessed under Section 29 of the Act 30 of 2013, cannot be countenanced, because, a plain reading of Section 29 of the Act 30 of 2013, makes it crystal clear that Section 29 simply directs the Collector to engage the experts to determine the market value of the building or things attached to the earth and it is not an enabling provision to determine the market



W.P.No.35385 of 2023

value of the building.

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21. Learned counsel for the petitioners, while taking this Court again to Section 29, states that the words, "... in determining the market value of the building ..." would mean that it refers to other provision enabling to determine the market value of the building, which is admittedly Section 26, which alone contains the enabling provision to determine the market value of the building(s) by applying definition clause of Section 3(p) of the Act 30 of 2013.

22. Again, while explaining Section 29 of the Act 30 of 2013, the learned counsel for the petitioners took this Court to the First Schedule to the Act 30 of 2013, more particularly to Sl.No.4 therein, and stated that the words "... value of assets to be assessed under Section 29....", occurring in the above provision of law, if interpreted blindly would mean as if Section 29 provides for determination of market value of assets attached to the earth, whereas, Section 29 only mandates the Collector to get the assistance of experts in determining the market value of the assets attached to the earth, which is only a procedural one. Learned counsel for the petitioners, in the above context, further contended that, since no value of assets attached to the earth is assessed under Section 29, then Sl.No.4 would become redundant and such interpretation makes the provision of law invalid, and hence, the learned counsel submitted that the "... value of assets to be assessed under Section 29...." as worded in Sl.No.4, under



W.P.No.35385 of 2023

the First Schedule, should be interpreted to mean only as "the market value of the assets" attached to the earth assessed under Section 26 of the Act 30 of 2013, by engaging the experts as stated under Section 29 of the Act 30 of 2013. Hence, according to the learned counsel, the said Sl.No.4 under the First Schedule, does not support the above contention of the respondents.

23. While explaining further the above said First Schedule, learned counsel for the petitioners also stated that Sl.No.1 under the First Schedule to the Act 30 of 2013 states that "1. Market value of the land is to be determined as provided under Section 26.." and the term "land" occurring in Sl.No.1 therein, means only the base land without including the assets attached to it, since, Sl.No.4 therein deals with the assets attached to the earth. Hence, the definition of the term "land" occurring in Section 3(p) will not be applicable to the First Schedule in the above context and this does not mean in any way that the word, "land" occurring in Section 26, should also be meant as in Sl.No.1 blindly. Explaining further, learned counsel submitted that in the said First Schedule, the Parliament decided not to apply the "solatium," for the assets attached to the "land" per-se and the words "... the assets attached to it...." separately should be included for calculating the solatium. Resultantly, the definition under Section 3(p) of the Act, shall not apply to the First Schedule and hence, it



W.P.No.35385 of 2023

cannot be extended, as a matter of fact, to Section 26 also.

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24. Learned counsel for the petitioners, while again drawing the attention of this Court to Section 26 of the Act 30 of 2013, submitted that the appropriate meaning of Section 26 is that the Collector shall determine the market value of the base land on his own, the assets attached to it, every case, like trees, crops, building, etc., separately by engaging experts in the respective field as per Section 29 of the Act 30 of 2013. Any other meaning to Section 26, as connoted by the respondents, would make Section 26 of the Act unconstitutional, as there would have been no provision to determine the market value of the assets attached to the earth. Further, no provision shall be interpreted to make the provision to be unconstitutional. Even a plain reading of Section 26, does not advance the interpretation of Section 26, as claimed by the respondents.

25. Learned counsel for the petitioners further contended that the contention of the respondents that Section 3(u) of the Act.... defining "market value of the land" as the one determined under Section 26 of the Act, and hence, it means only the land and nothing else, could not be accepted, as the definition of 'market value' under Section 3(u) makes it clear that the market value of the land, i.e., base land and the assets attached to the earth, are to be determined under Section 26 of the Act 30 of 2013 and not under any other Section of the said Act 30 of 2013. When Section 26 is the enabling provision for



W.P.No.35385 of 2023

determining the market value, then it should decide the market value of the assets attached to the earth also, and hence, Section 3(u) read with Section 3(p) of the Act 30 of 2013, extinguishes the contentions of the respondents in that regard.

26. Learned counsel for the petitioners also stated that the contention of the respondents/State that Section 3(p) shall not apply to Section 11 of the Act 30 of 2013, for the purpose of land acquisition and shall also not be applied to any other Section of the Act 30 of 2013, for the purpose of compensation, has to be rejected. Even though it is true that Section 3(p) which defines "land", would apply only to Section 11 of the Act 30 of 2013, to describe the entire properties proposed to be acquired; just simply because Section 3(p) applies to Section 11, it could not be logically concluded that Section 3(p) will not apply to Section 26, to assess the market value notified for acquisition. Hence, there cannot be two enabling provisions to determine the market value of the land(s) and the assets attached to it separately. Thus, this Court may consider that in the Act 30 of 2013, only one enabling provision is there under Section 26 to determine the market value of the land, buildings, crops, trees, etc. Further, all the other Sections, namely Sections 27, 28 and 29 only contain the factors and procedures that are to be taken into consideration and be followed while determining the market value under Section 26 of the Act 30 of 2013.



W.P.No.35385 of 2023

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27. It is worthwhile to quote Sections 26, 27, 28, 29 and 30 of the Act 30 of 2013, as follows:

Section 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



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W.P.No.35385 of 2023

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:



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W.P.No.35385 of 2023

Provided that in a case where the Requiring Body offers its shares to the owners of the land (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 education 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 institutions of their choice.

(This clause seeks to provided criteria in assessing and determining the market value of the land by Collector (Notes on Clauses).

Section 27: Determination of amount of compensation: The Collector having determined the market value of the land to be acquired shall calculate the total amount of compensation to be paid to the land owner (whose land has been acquired) by including all assets attached to the land.

(This Clause seeks to provide determination of amount of compensation by the Collector after having determined the market value of the land to be acquired. (Notes on Clauses).



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W.P.No.35385 of 2023

Section 28: Parameters to be considered by Collector in determination of award:--In determining the amount of compensation to be awarded for land acquired under this Act, the Collector, shall taken into consideration--

firstly, the market value as determined under section 26 and the award amount in accordance with the First and Second Schedules;

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops and trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change;

sixthly, the damage (if any) *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 19 and the time of the Collector's taking possession of the land; and

seventhly, any other ground which may be in the interest of equity, justice and beneficial to the affected families.

Section 29: Determination of value of things attached to land or building:--(1) The Collector in determining the market value of the building and other immovable property



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W.P.No.35385 of 2023

or assets attached to the land or building which are to be acquired, use the services of a competent engineer or any other specialist in the relevant field, as may be considered necessary by him.

(2) The Collector for the purpose of determining the value of trees and plants attached to the land acquired, use the services of experienced persons in the field of agriculture, forestry, horticulture, sericulture, or any other field, as may be considered necessary by him.

(3) The Collector for the purpose of assessing the value of the standing crops damaged during the process of land acquisition, may use the services of experienced persons in the field of agriculture as may be considered necessary by him.

(This clause seeks to provide determination of value of things attached to land or building. (Notes on Clauses).

Section 30: Award of solatium (1) The Collector having determined the total compensation to be paid, shall, to arrive at the final award, impose a "Solatium" amount equivalent to one hundred per cent of the compensation amount.

Explanation: For the removal of doubts, it is hereby declared that solatium amount shall be in addition to the compensation payable to any person whose land has been acquired.

(2) The Collector shall issue individual awards detailing the particulars of compensation payable and the details of payment of the compensation as specified in the First Schedule.

(3) In addition to the market value of the land provided under section 26, the Collector shall, in every case, award an amount calculated at the rate of twelve per cent per annum on such market value for the period commencing on and from the date of the publication of the notification of the Social Impact Assessment study under sub-section (2) of section 4, in respect of such land, till the



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W.P.No.35385 of 2023

date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

This clause seeks to provide award of solatium by the Collector after having determined the total compensation to be paid to arrive at the final award. (Notes on Clauses)."

28. While drawing the attention of this Court to Section 30(3) of the Act 30 of 2013, learned counsel for the petitioners contended that Section 30(3) mandates to award an additional amount, in every case, calculated at the rate of 12% per annum. The words "in every case" occurring in Section 30(3) read with Section 29 of the Act 30 of 2013, makes it conspicuously clear that the District Collector shall determine the market value of the base land by himself, market value of building through Public Works Department (PWD) Engineers, market value of crops through agriculture experts and treats through forest experts separately and to add 12% additional value to each of the market value separately. This shows that 12% additional amount should be added for all the market values of the items that are occurring under the definition of land under Section 3(p) of the Act 30 of 2013. More importantly, a reading of Section 69(2) of the Act 30 of 2013, shows that 12% interest shall be applied "in every case".



W.P.No.35385 of 2023

29. In the above factual backdrop, as submitted by the learned counsel for the petitioners, it is worthwhile to quote Section 30(3) of the Act 30 of 2013, as follows:

30. Learned counsel for the petitioners drew the attention of this Court, concentrating on 12% additional amount with regard to the acquisition of land(s), and submitted as under:

(a) the land owners right to alienation of their properties after issue of initial Notification for land acquisition, have to be compensated, but the loss is same both for land and the assets attached to the land.

(b) Further, even though the date of Award is two years later, it is calculated taking into account the market value not on the date of Award, but on the date of initial Notification, thereby, the compensation amount worked out on the date of initial date of Notification is paid belatedly and the Act 30 of 2013 does not provide for any interest for this delay in payment of the compensation, i.e. from the date of initial Notification to the date of Award. In this regard, learned counsel for the petitioners submitted that the Act 30 of 2013 provides for interest only for the period of delay that occur after the date of Award and hence, the period from the date of initial Notification to the date of Award, is required to be compensated and only for this purpose, Land Acquisition Act of 1894 - Section 23(1-A) and Act 30 of 2013 - Section 30(3) provides for additional



W.P.No.35385 of 2023

amount of 12% per annum on the market value of the acquired properties for the period from the date of initial Notification to the date of Award / date of taking possession, whichever is earlier. Therefore, the monetary loss suffered by the petitioners during the said period, is the same , both due to the market value of the land and the same due to the assets attached to the land(s). Hence, there is no logic to deny 12% additional amount for the cost of the buildings also. In the absence of the same, the above said provision of law, violates Article 14 and 300-A of the Constitution of India.

(c) As regards the amount of Award to be paid/not paid, under the erstwhile Land Acquisition Act of 1894 is concerned, it is the submission of the learned counsel for the petitioners that Section 30(3) of the Act 30 of 2013 is identical to Section 23(1-A) of the 1894 Act. It is admitted that under the 1894 Act, the State had already paid 12% per annum as additional amount for the market value of the buildings. It is reflected in the interim Award dated 30.09.2017. The respondents/State also admit the same in the additional counter affidavit, dated 14.03.2024 that the 12% additional amount was calculated on the building cost also, as per the 1894 Act. Thus, when the additional 12% amount was paid for the building cost under the 1894 Act, it is not known as to how the respondents construe the Act 30 of 2013 being a more beneficial Legislation, differently, that too, detrimental to the interest of the land owners.



W.P.No.35385 of 2023

(d) As regards not determining the market value under Section 26 of the Act 30 of 2013, without determining the average sale prices based on the sale deeds executed, but only adopting the guideline value, blindly, it is submitted by the learned counsel for the petitioners that the sale price under Section 26(1)(b) of the Act 30 of 2013, had not been considered by the respondents. It is admitted fact that the first respondent/SDRO/LAO had not calculated the average sale prices as mandated under Section 26(1)(b) of the Act 30 of 2013. Thus, the first respondent failed to calculate the market value under Section 26 as per the Act 30 of 2013 (New Land Acquisition Act of 2013). Hence, the first respondent may have to consider the sale prices stated therein to pass the Award.

(e) As far as the effect of passing the interim Award on 30.09.2017 is concerned, it is the submission of the learned counsel for the petitioners that the Act 30 of 2013 does not contemplate the passing of interim Award. In this regard, learned counsel for the petitioners relied on the decision of the Honourable Supreme Court reported in 1995 (1) SCC 519 (paragraph 17) (State of Tamil Nadu Vs. Ananthi Ammal). Hence, according to the learned counsel for the petitioners, the interim Award dated 30.09.2017 is not at all an Award in the eye of law and the amount of interim Award received on 20.10.2023 by the petitioners, is only to be taken as part-payment of compensation.



W.P.No.35385 of 2023

(f) As to the foremost contention of the learned counsel for the petitioners as to payment of compounding of interest for the delay beyond one year from the date of taking of possession on 08.10.2018, is concerned, as per Section 38 of the Act 30 of 2013, the compensation ought to have been paid before taking possession. In this regard, Section 38 of the Act 30 of 2013 has to be quoted:

"Section 38: Power to take possession of land to be acquired:

(1) The Collector shall take possession of land after ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary for the monetary part of rehabilitation and resettlement entitlements listed in the Second Schedule commencing from the date of the award made under Section 30:

Provided that the components of the Rehabilitation and Resettlement Package in the Second and Third schedules that relate to infrastructure entitlements shall be provided within a period of eighteen months from the date of the award:

Provided further that in case of acquisition of land for irrigation or hydel project, being a public purpose, the rehabilitation and resettlement shall be completed six months prior to the submergence of the lands acquired.

(2) The Collector shall be responsible for ensuring that the rehabilitation and resettlement process is completed in all its aspects before displacing the affected families."

(The clause seeks to provide power to take



W.P.No.35385 of 2023

Act of 2013). In this regard, it is useful to quote Section 80 of the said Act:

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Section 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 of 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.

(This clause seeks to provide that the Collector shall pay at the rate of nine per cent per annum whenever amount of compensation is not paid or deposited with the Authority before taking possession of the land. (Notes on clauses)."

32. Therefore, the learned counsel for the petitioners submitted that this Court, in exercise of powers under Article 226 of the Constitution of India, may direct the first respondent to pass fresh Award with 15% interest compounded for every six months after one year from the date of taking possession herein, one year after 08.10.2018, i.e. with effect from 08.10.2019.

33. It is the further submission of the learned counsel for the petitioners that the lands of the petitioners were acquired in 2016 and the possession was

Page No.64/74



W.P.No.35385 of 2023

taken only on 08.10.2018 and till this date, the petitioners are driven from pillar to post and struggling to get the compensation and after five years, they had obtained the compensation, that too, partly and according to the rough calculation made by the learned counsel for the petitioners, more than Rs.3.50 crores is yet to be paid. Though according to the learned counsel, the present Writ Petition is the fourth litigation being filed by the petitioners, ultimately, the learned counsel lastly prayed that the compensation be directed to be paid at the earliest.

34. Countering all the above submissions of the learned counsel for the petitioners, learned Additional Advocate General appearing for the respondents 1, 3, 4 and 5, assisted by the learned Additional Government Pleader, submitted that in the case on hand, the Award was duly passed, which had also been communicated to the petitioners in time, and the question of awarding penal interest, does not arise in this case. The factum of receipt of the final Award has also been acknowledged by the petitioners.

35. Learned Additional Advocate General further submitted that as per Section 30(3) of the Act 30 of 2013 (New Land Acquisition Act of 2013), it is only for the "land" portion alone, the compensation could be paid to the land owners (petitioners herein) and all the proceedings connected to the Writ Petition, are duly based on the G.O.Ms.No.29, Revenue and Disaster Management



W.P.No.35385 of 2023

Department, Land Administration Wing (LA-1(1)) Section, dated 24.01.2019 and the Award has also been duly communicated to the concerned District Judge and if at all the petitioners have got any grievance, they have to approach only the District Court and seek for appropriate relief, and not this Court under Article 226 of the Constitution of India and hence, he prayed that the Writ Petition itself is not maintainable.

36. This Court heard the submissions made on both sides and perused the entire materials available on record.

37. Originally, Notification under Section 15(2) of the Tamil Nadu Highways Act (State Act) to acquire an extent of 0.0140.5 was published on 18.07.2016 and later an errata was issued to acquire an extent of 80 sq.meters alone owned by one K.Indira, wife of the first petitioner, who died on 13.08.2021. All the petitioners are the legal heirs of the deceased. Now the petitioners have challenging the Award dated 15.09.2022 in Award No.4 of 2017 (L.C.No.184) in No.878/B4/2022 passed by the first respondent/SDRO/LAO, Tamil Nadu Road Sector Project-II, Salem, filed the present writ petition. Subsequently, the petitioners have also amended the above original prayer to the present one, which was allowed by this Court on 28.03.2024 in W.M.P.No.4022 of 2024 (in W.P.No.35385 of 2024), by which, the petitioners have also challenged the very G.O.Ms.No.29 itself pertaining to the lands under



W.P.No.35385 of 2023

dispute. Thus, by the amended prayer, the petitioners have brought in the Act 30 of 2013 itself even in the prayer itself, disputing indirectly even the payment of compensation made to them. At the risk of repetition, the amended prayer of the petitioners in this Writ Petition, is once again extracted hereunder:

"Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records from the fifth respondent relating to the issue of G.O.(Ms).No.29, Revenue and Disaster Management Department, Land Administration Wing (LA-1(1)) Section, dated 24.01.2019 and from the first respondent relating to the issue of the Award No.4/2017 (L.C.No.184) in No.878/B4/2022, dated 15.09.2022, (actually served on the petitioner on 30.05.2023), in respect of the petitioners lands having an extent of 80 Sq.Mt. situated in T.S.No.J/29/2-3 in Maravaneri Village, Salem Taluk and District, acquired by the first respondent, quash the same and consequently to direct the first respondent to pass a fresh award truly in accordance with the mandate of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and to pay the petitioners the Award amount so passed afresh along with appropriate interest in accordance with the said Act and compounding the same for every 6 months period after a year of taking possession, till the date of payment after deducting the amounts already paid to the

Page No.67/74



petitioners on 17.02.2023 and 20.10.2023 within a time frame as may be fixed by this Court and also to direct the fifth respondent to initiate appropriate disciplinary and criminal proceedings against the second respondent and others whose names are not known to the petitioners who are party to the passing of the impugned Award."

38. According to the petitioners, while passing the impugned Award, the authority concerned has violated the mandatory provisions of Section 30(3) of the Act 30 of 2013. The grievance of the petitioners is that the interim Award was not intimated and the final Award dated 15.09.2022 was also received by the petitioners on 30.05.2023 i.e. only after eight months and while passing the final Award, the first respondent has not included the market value of the building.

39. Though the respondent(s) deny the contentions of the petitioners and rely on the G.O., which is impugned in this writ petition on a perusal of the final Award passed by the respondents and also considering the materials/documents available on record, it is seen that the respondents have not proved that the preliminary/interim Award was served on the petitioners.

40. It is not in dispute that the land(s) of the petitioners was/were acquired along with structure and it is also admitted that the interim Award/final



W.P.No.35385 of 2023

Award was also passed. On a reading of the entire materials available on record, it is crystal clear that the final Award was served only on 30.05.2023. Moreover, while calculating the compensation for the land(s) acquired by the respondents, the authority concerned has passed the impugned final Award, which Award speaks of both land(s) and structure. As per Section 3(p) of the Act 30 of 2013, "land" includes benefits that arise out of the land, and things attached to the earth or permanently fastened to anything attached to the earth. Even though, the respondents while calculating the compensation, correctly awarded 100% solatium, but, they granted the market value and the interest @ 12% only for the base land, and as stated above, it should be for the superstructure also.

41. Section 30(3) of the Act 30 of 2013, dealing with "Award of Solatium" states that, "In addition to the market value of the land provided under Section 26, the Collector shall, in every case, award an amount calculated at the rate of twelve per cent, per annum on such market value for the period commencing on and from the date of publication of the notification of the Social Impact till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier." Adding thereto, it is to be noted that this Clause seeks to provide award of Solatium by the Collector after having determined the total compensation to be paid to arrive at the final award. But the impugned G.O.Ms.No.29 speaks otherwise, which in strict sense, is against the tone and tenor of the Act 30 of 2013 and the decisions of the Hon'ble Supreme Court

Page No.69/74



W.P.No.35385 of 2023

reported in 2023 SCC OnLine SC 598 (C.S. Gopalakrishnan etc. vs. State of Tamil Nadu and Others), wherein, the validity of State Act and Central Act was challenged and the Hon'ble Supreme Court upheld the validity of the State Act and for payment Central Act would apply.

42. Further, it is to be pointed out that the relevant G.O. had to be in compliance with the Central Act of 2013, insofar as payment of compensation, is concerned, but, in this case the impugned G.O is in violation of the Central Act as well as the decisions of the Hon'ble Supreme Court stated *supra*.

43. On a reading of the above provisions of law, though it is stated that the land(s) were acquired as per 2002 State Act, but however, on challenge of the State Highways Act of 2002, the State Act was upheld by the Hon'ble Supreme Court, and in terms of computing compensation, the Central Act has to be followed, and in such a scenario, the compensation has to be calculated as per the Central Act 30 of 2013.

44. On a conspicuous reading of Section 3(p), Section 26 and Section 30(3) of the Central Act 30 of 2013 and also the decisions rendered by the Hon'ble Supreme Court stated *supra* and on a perusal of the impugned final Award passed by the respondent(s)/State, the impugned G.O. is not sustainable and hence the same is liable to be quashed. Further as stated earlier, Section 3(p) of the Act 30 of 2013 speaks "things attached the earth or permanently



W.P.No.35385 of 2023

fastened to anything attached to the earth", and therefore, necessarily the interest has to be calculated and awarded for the structure also, which has not been done in the present case, and therefore, the respondents/State is bound to calculate the interest for the super-structure also, and pay the same to the petitioners.

45. In view of the foregoing discussions/observations, the Writ Petition is partly allowed in the following terms:

(1) The impugned Government Order in G.O.(Ms.)No.29, Revenue and Disaster Management Department, Land Administration Wing (LA-1) Section, dated 24.01.2019 is hereby quashed.

(2) The Award No.4/27 (L.C.No.184) in No.878/B4/2022, dated 15.09.2022 is quashed and the first respondent is directed to pass fresh Award in terms of Central Act, 2013, in which, the value for superstructure also shall be calculated and paid to the petitioners. The 12% interest should be calculated from the date of Notification under Section 15 (1) of the State Act till the date of payment, compounding the same for every six months period. Such an exercise should be carried out and completed within a period of six weeks from the date of receipt of a copy of this order.

(3) As far as the relief with regard to awarding punishment to the officials, is concerned, she is only discharging the official duty relying on the impugned Government Order issued by the Government and there is no malafide

Page No.71/74



W.P.No.35385 of 2023

intention on the part of the officials and hence there is no question of awarding punishment as contended by the writ petitioners.

(4) There shall be no order as to costs.

(5) W.M.P.No.35355 of 2023 is ordered on payment of separate Court fee, if any, by each of the petitioners. The other miscellaneous petitions in W.M.P.Nos.35356 and 35359 of 2023 are closed.

08.07.2024

Index:Yes/no

Speaking Order: Yes/no

Neutral Citation case: Yes/no

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Page No.72/74



W.P.No.35385 of 2023

To
WEB COPY

1. The Special District Revenue Officer/
Land Acquisition Officer,
Tamil Nadu Road Sector Project-II,
68/136, K.Gangai Street,
Nedunchallai Nagar, Salem-5, Salem-636 005.
2. The District Collector, Salem District, Salem.
3. The Commissioner of Land Administration, Chepauk, Chennai-5.
4. The Secretary, Highways Department, Fort St.George, Chennai-9.



WEB COPY



W.P.No.35385 of 2023

P. VELMURUGAN, J

CS

Pre-delivery order in
W.P.No.35385 of 2023

Order pronounced on 08.07.2024

Page No.74/74