



W.P(MD)No.14136 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.07.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.14136 of 2021

N.Nithiyakumar

... Petitioner

Vs.

The Commissioner,
Karur Municipality,
Azad Road,
Karur Town,
Karur.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the Respondent to fix and pay the compensation for the acquired lands measuring 13.90 cents in S.F. 331/4 of Inam Karur Village, Karur Taluk as per the undertaking given by the Respondent in W.P.(MD) No.14328 of 2020 on the basis of the petitioner's representation dated 11.02.2021 within the time frame as fixed by this Court.

For Petitioner : Mr.K.Suresh

For Respondent : Mr.K.Balasubramani
Special Government Pleader



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ORDER

Heard both sides.

2. The petitioner filed W.P.(MD)No.14328 of 2020 for forbearing the respondents from putting up any kind of construction in S.F.No.331/4 at Inam Karur Village. The petitioner relied on the decree dated 06.03.1992 made in O.S.No.375 of 1991 on the file of the District Munsif Court, Karur. The decree was for declaration and permanent injunction against the respondents. The decree is holding good and has not been set aside. O.S.No.366 of 2020 had been filed by the State before the District Munsif Court, Karur for declaration that the aforesaid judgment is invalid. Since the project had been stalled, the municipality filed memo before me stating that they would acquire 13.90 cents in S.F.No.331/4 and that compensation would be fixed on par with the compensation paid to the adjacent land owner namely one Suresh Kumar in respect of the Survey No.338/A. Recording the stand taken by the Municipality, I permitted the project to go on. The project had subsequently been completed also. But the municipality did not pay any compensation to the petitioner. Hence, this writ petition came to be filed.



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3. The municipality has filed the counter affidavit and have taken the stand that since the petitioner is not having any revenue record in his favour, question of paying compensation does not arise at all. When such stand was taken before a learned Judge of this Court, the following order was passed on 06.11.2023:-

“This writ petition has been filed for the issue of a writ of mandamus, directing the respondents to fix and to pay compensation for the lands acquired to an extent of 13.90 cents in S.F.No.331/4 at Inam Karur village, Karur Taluk.

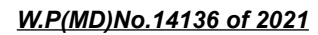
2.The learned counsel for the petitioner brought to the notice of this Court the earlier order passed in W.P.(MD)No.14328 of 2020, dated 22.01.2021. The relevant portions in the order passed by this Court are extracted hereunder:

“3.The petitioner draws the attention of this Court to the decree, dated 06.02.1992 passed in O.S.No.375 of 1991 on the file of the District Munsif Court, Karur. Though the decree is an ex parte decree, it is not in dispute that till date, no application has been made to set aside the ex parte decree. I made it clear that unless the decree is set side, the respondent cannot be allowed to get along with the project.

4.The third respondent Municipality has filed a memo, in which, the following undertaking is given:

“4.It is submitted that on 14.10.2020, this Hon'ble Court has granted interim injunction and thereafter the municipality also has filed counter. In the interest of public, the municipality is abide to acquire the land bearing an extent of about 13.90 cents in S.No.331/4 by following the Land acquisition proceedings for purpose of constructing drainage and link road. It is pertinent to note that for acquiring aforesaid extent 13.90 cents from S.No.331/4, the value of compensation shall be fixed equally in par with the value of compensation going to be fix to nearby adjacent land owner namely Suresh Kumar in S.No. 338/A.”

5.As regards the remaining extent of land which is in the very same survey number, the rights of the parties will abide by the out come of the civil proceedings. The



3. On plain reading of the above order, it is seen that the respondent Municipality had taken a stand that the compensation will be fixed for an extent of 13.90 cents and it will be paid on par with the compensation that was fixed for the adjacent land owners. As far as the remaining extent of nearly 27 and odd cents, the parties had agreed to abide by the outcome of the civil proceedings. Based on this stand, this Court had permitted the project to proceed further.

“9. I humbly submit that due to the various following intervening circumstances

b. There is no Revenue Records in favour of the Writ Petitioner, evident to show that the property in question is an ancestral property of Writ Petitioner.

The claim of the Writ Petitioner for payment of compensation could not be considered. I further submit, even assuming and without admitting I am stating that, if the Writ Petitioner is entitled for compensation on par with one Suresh who is the adjacent land owner as mentioned in the W.P.(MD)No. 14328 of 2020, the same is not disbursed to the aforesaid Suresh so far. That apart the order for compensation of land acquisition was passed by the competent authority only on 19.04.2022 vide proceedings in Na.Ka.No. Al/1674/2020. 10. I humbly submit that, I have been advised to state that the civil suit seeking declaratory relief in respect of water body is not at all maintainable, in such circumstances we have a good chances of success in the present civil suit in O.S.No. 366 of 2020. If that being so, if any compensation is paid the same could not be recovered later and it will become a permanent loss to the Government exchequer. It is not out of the place to state that even as per the observation made in W.P. (MD)NO. 14328 of 2020 the parties concerned are abide by the result of civil



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proceedings in such case the payment of compensation would not at all arise until the disposal of civil suit. This Writ Petition and the earlier order made in W.P.(MD)No. 14328 of 2020 are entirely based upon the ex-parte decree of the year 1991 and that ex-parte decree itself is under challenge before the competent civil Court.”

6.The present writ petition is virtually in the nature of execution/implementation of the earlier order passed in W.P.(MD)No. 14323 of 2020, based on the memo that was filed by the respondent Municipality and the specific stand taken by them. The stand that has been taken presently in the counter affidavit runs counter to the earlier stand taken. The respondent Municipality has now decided not to pay compensation even with respect to 13.90 cents till the disposal of the suit in O.S.No.366 of 2020. If the respondent Municipality had brought to the notice of the learned Single Judge about the pendency of the suit while passing the order in W.P.(MD)No.14323 of 2020, it would have enabled the learned Single Judge to pass appropriate orders in the writ petition.

7.The respondent Municipality has now come up with the present stand during the pendency of this writ petition. It now ultimately boils down to an extent of 13.90 cents, for which, the petitioner was expecting for payment of compensation and he has been informed that there is a suit filed in O.S.No.366 of 2020 to declare the decree passed in O.S.No.375 of 1991 as null and void. In the meantime, the respondent Municipality has proceeded further with the project

8.In the considered view of this Court, the matter has to be placed before the Hon’ble Mr. Justice G.R.Swaminathan, since the learned Judge had dealt with the earlier writ petition and passed orders and the present writ petition hinges upon the earlier order passed by the learned Single Judge.

9.In view of the above, Registry is directed to place this writ petition before Hon’ble Mr. Justice G.R.Swaminathan.

4. That is how the matter has come to be listed before me. I cannot appreciate the stand taken by the respondents. The principle of estoppel would clearly apply. When the petitioner moved this Court on the earlier occasion,



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the respondents took the stand by filing a written memo that the project may be allowed to go on and that compensation would be paid to the petitioner. Having given such a solemn undertaking before this Court, the respondent cannot now do an about-turn. The petitioner cannot be called upon to furnish patta, since he was having a decree of declaration and permanent injunction in his favour. I consciously refrain from going into the precise quantum. I direct the respondents to pay appropriate compensation to the petitioner for having acquired an extent of 13.90 cents. This amount shall be paid within four months from today.

5. The Writ Petition is allowed. No costs.

25.07.2024

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

The Commissioner,
Karur Municipality,
Azad Road,
Karur Town,
Karur.



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G.R.SWAMINATHAN, J.

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