



W.P.(MD) No.18489 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2024

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THE HONOURABLE Ms.JUSTICE P.T.ASHA

**W.P.(MD) No.18489 of 2016
and
W.M.P.(MD) No.13379 of 2016**

K.Shanmugaraj

... Petitioner

/vs./

- 1.The District Collector,
Ramanathapuram,
Ramanathapuram District.
- 2.The Authorized Officer cum
Special District Revenue Officer,
Land Acquisition,
National Highway - 49,
Ramanathapuram,
Ramanathapuram District.
- 3.The Project Officer,
National Highways Authority of India,
Subramaniaburam,
Karaikudi,
Sivagangai District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the award passed by the 2nd respondent's proceedings in Na.Ka./The.Ne.49/Alagu V/195/2013 dated 15.12.2014 and quash the same and consequently direct the respondents to assess the compensation for the Petitioner's Land in Survey No. 286/1C under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioner : Mr.V.Perumal

For R1 : Mr.D.S.Nedunchezhiyan
Government Advocate

For R2 & R3 : Mr.C.Arulvadivel @ Sekar

ORDER

The above writ petition has been filed for a Writ of Certiorarified Mandamus to quash the award passed by the second respondent in Na.Ka./The.Ne.49/Alagu V/195/2013 dated 15.12.2014 and to direct the respondents to assess the compensation for the petitioner's land in S.No.286/1C under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.



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2.The learned counsel for the petitioner would submit that the issue is covered in favour of the petitioner, in view of the judgment passed by the Division Bench of this Court in ***W.A.(MD) No.92 of 2022 (The Competent Authority cum District Revenue Officer and others Vs. S.Rudhra Devi and another) dated 05.09.2023.***

3.The learned Government Advocate for the first respondent as well as the learned counsel for the respondents 2 and 3 would concede the same.

4.In the proceedings before the Bench, a defense was taken that the remedy available to the petitioner/land owner under the National Highway was only to invoke arbitration before the learned Arbitrator. However, the Bench took note of the fact that the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has come into force with effect from 01.01.2014 and certain provisions of the said Act became applicable to the other Acts as set out in the 4th Schedule which includes the National Highways Act, 1956. The Bench has countenanced the said argument and set out the reasons for the same in para 4 of the said judgment, which reads as under:



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"4.The contention of the learned Additional Advocate General that the appellants/respondents ought to have raised the same before the Arbitrator and that even if the Arbitrator has not considered the same, they should have filed an application for setting aside the arbitral award under Section 34 of the Arbitration and Conciliation Act is untenable for the reasons that:

(i) The prayer of the writ petitioners is to re-determine the compensation by awarding additional amounts which they are entitled to under Act 30 of 2013. Therefore, the Court dealing with an application under Section 34 of the Arbitration and Conciliation Act cannot meddle with the award it has to either accept the same or set aside the same;

(ii) When the circular itself was issued on 28.12.2017, the arbitral proceedings were pending before the District Collector/Land Acquisition Arbitrator. Therefore, the appellants/respondents cannot be found fault for specifically not raising the issue in the claim petition;

(iii) On the other hand, the said argument is raised on behalf of the National Highways Authorities, the State cannot be countenanced in the teeth of the Article 300A of the Constitution of India. Even if the person or an individual, over looks or unknowingly does not claim the benefit of a provision of grant of compensation where the State



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exercises eminent domain and acquires the land, it cannot be heard to contend that by oversight the other person has not raised the issue and therefore, it will not pay the compensation. These kind of procedural argument cannot be accepted on behalf of the State which would go against the core principles of fair and adequate compensation to be paid in matters of compulsory land acquisition done in exercise of its eminent domain;

(iv) Such a procedural argument is also bound to fail on the face of the another procedural argument that when the District Collector has been consulted right from the beginning on the formation of the Highways, determination of the compensation etc., and when he signs a file as a supervising authority at every stage of the proceedings, the very nomination of the District Collector by a general order as the arbitrator by itself would render the arbitral proceedings per se illegal;

(v) The circular dated 28.12.2017 r/w the mandatory legal provisions under Act 30 of 2013 enjoins the duty on the appellants to redetermine the compensation. The circular gives a right to seek for redetermination and not merely to attack the error in the original determination which is only the purpose of the arbitral proceedings.

For all the above reasons, we reject the said contention raised by



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the learned Additional Advocate General on the behalf of the appellants."

5. Therefore, in the light of the judgment of the Division Bench of this Court in ***W.A.(MD) No.92 of 2022 (The Competent Authority cum District Revenue Officer and others Vs. S.Rudhra Devi and another) dated 05.09.2023***, the Writ Petition stands allowed and the matter is remitted back to the second respondent for reworking the compensation amount as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The said exercise shall be completed within a period of 8 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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To

The District Collector,
Ramanathapuram,
Ramanathapuram District.



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P.T.ASHA, J.

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