



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2025

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CORAM :

THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

Writ Petition Nos.18997 of 2015 & 33681 of 2019
and WMP No.34146 of 2019

Mr.K.Arumugam

.... Petitioner
in Both WPs

-Vs-

- 1.The Principal Secretary
Government of Puducherry
Local Administration Department
Pondicherry.
- 2.The Deputy Collector (Revenue) North
Government of Puducherry
Pondicherry.
- 3.The Director
Local Administration Department
Pondicherry.
- 4.The Director
Survey and Land records Department
Pondicherry.
- 5.The Commissioner
Ariankuppam Commune Panchayat
Ariankuppam, Puducherry.
- 6.The Panchayat President
Verampattinam Village Panchayat
Verampattinam, Puducherry.

..Respondents
in WP.No.33681 of 2019



7.The Tahsildar
Revenue Department
Pondicherry.

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..Respondents
in WP.No.18997 of 2015

Prayer in W.P.No.18997 of 2015: Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to implement the order of the 5th respondent in File No.50-127/ACP/2006-07/0482 dated 19.06.2012 for suitably granting compensation towards acquiring the land in R.S.No.128/1, 128/2, 128/3 of Commune Panchayat, Ariyankulam, Puducherry including interest, solatium, additional compensation in a time bound period.

Prayer in W.P.No.33681 of 2019 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, forbearing the respondents from in any manner allowing burial and cremation activities in the subject matter of the property in R.S.No.128/1, 128/2, 128/3, of Commune Panchayat, Ariyankulam, Puducherry.

For Petitioner : Mr.N.U.Pressanna
(Both WPs) for Mr.K.Arumugam

For Respondents : Mr.A.Tamilvanan
(W.P.No.18997/2015) Additional Government Pleader
for R1 to R7
(W.P.No.33681/2019) for R1 to R6



COMMON ORDER

The issue involved in both these writ petitions are common and hence it is taken up together, heard and disposed of through this common order.

2.WP.No.18997 of 2015, has been filed for a direction to the respondents to implement the order of the 5th respondent dated 19.06.2012 and to pay the compensation to the petitioner along with interest within the time frame fixed by this Court.

3.WP.No.33681 of 2019, has been filed for the issue of a writ of mandamus forbearing the respondents from allowing any further burial/cremation activities in the subject property.

4.Heard Mr.N.U.Pressanna, learned counsel for the petitioner, Mr.A.Tamilvanan, learned Additional Government Pleader for R1 to R7.

5.The case of the petitioner is that the subject property absolutely belongs to the father of the petitioner through a registered sale deed dated 06.10.1962. The fishermen community belonging to Veerampattinam started utilising the property for burying/cremation of the dead bodies. The same was permitted by the Ariyankuppam Commune Panchayat. Thereby, the land belonging to the petitioner was acquired and



was utilised as a burial ground without paying any compensation.

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6.The petitioner therefore made a representation dated 17.10.2011 to the 5th respondent seeking for payment of compensation. On the receipt of the representation, the 5th respondent through proceedings dated 19.06.2012 came to a conclusion that the total compensation that is payable is Rs.83,99,256/-. This compensation was calculated under the Land Acquisition Act, 1894. For proper appreciation, the relevant portions are extracted hereunder:

In this regard the land portion which is utilised as burial ground has been demarcated and the extent of the encroached land portion is calculated as follows based on the FMB (enclosed)

a) Burial ground

1.RS No.128/2 pt	= 124 sqm
2.RS No.128/3 pt	=3328 sqm

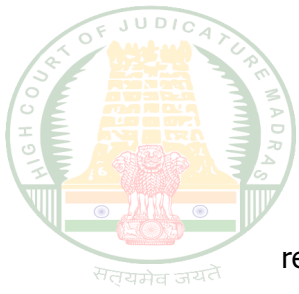
	3452 sqmx10.76 = 37,143.52 sqft.

b) Road portion

1.RS No.128/2 pt	= 91 sqm
2.RS No.128/3 pt	=360 sqm

	451 sqmx10.76 = 4,852.76 sqft.

Total (a+b)	= 41,996.28 sqft
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The G.L.R.Value also obtained from the Revenue Officer vide reference 2nd cited and the GLR value of of the land at Rs.No.128/1, 128/2 & 128/3 of Ariankuppam revenue village has been given as rs.200/-sqft.

According to the request of the petitioner the compensation to be paid is calculated as follows:-

$$41,996.28 \text{ sqft} \times \text{Rs.}200/- \text{ sqft} = \text{Rs.}83,99,256/-$$

(Rupees eighty three lakhs ninty nine thousand two hundred fifty six only)

Further, I am to state that this commune Panchayat is not financially sound to meet out this huge expenditure so as to acquire the Land. Hence, I am to request that necessary expeditious steps may kindly be taken at Government level to acquire the land as early as possible so as to avoid any untoward activities by the land owner to the Public of Veerampattinam Village.

7.It is clear from the above that the land belonging to the petitioner was bit acquired and it was used as a burial ground and no compensation was paid to the petitioner. The only reason that has been assigned in the above proceedings is that the commune panchayat is not financially sound to pay the compensation and therefore it was decided to take up the issue before the Government to acquire the land and pay the necessary compensation to the land owner.



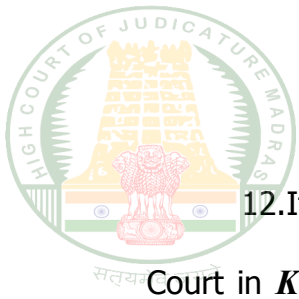
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8. After the issuance of the proceedings of the 5th respondent dated 19.06.2012, the Government of Puducherry (2nd respondent) made a communication to the 5th respondent dated 13.09.2012 calling for the relevant records in order to proceed further with the order. In spite of the above proceedings issued, there was absolutely no progress and no compensation was paid. It is under these circumstances, WP.No.18997 of 2015, came to be filed before this Court for implementation of the orders passed by the 5th respondent for granting compensation.

9. During the pendency of the above writ petition, since no compensation was paid, WP.No.33681 of 2019, was filed to restrain the respondents from using the property as a burial ground.

10. Even till date, no proceedings have been initiated for acquisition of the lands even under the new Act but however, the land continues to be utilised as a burial ground.

11. Acquiring a land without compensation amounts to deprivation of the land owner of his valuable property. The entitlement of compensation of the land owner has now gained the status of a fundamental right by the judgement of the Apex Court in *Tukaram kana Joshi and Ors. Thr. Power of Attorney .V. M.I.D.C. And ors* reported in *2012 8 MLJ 515*.



12. It will be more beneficial to take note of the recent judgement of the Apex Court in *Kolakata Municipal Corporation and Another .vs. Bimal Kumar Shah and Others* reported in *2024 10 SCC 533*. The Apex Court has categorically held in paragraph 33.5 as follows:

33.5. The Right of restitution or fair compensation

33.5.1. A person's right to hold and enjoy property is an integral part to the constitutional right under Article 300-A. Deprivation or extinguishment of that right is permissible only upon restitution, be it in the form of monetary compensation, rehabilitation or other similar means. Compensation has always been considered to be an integral part of the process of acquisition.

33.5.2. Section 11 of the Land Acquisition Act, 1894, Sections 8 and 9 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 23 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Sections 3-G and 3-H of the National Highways Act, 1956 are the statutory incorporations of the right to retribute a person whose land has been compulsorily acquired.

33.5.3. Our courts have not only considered that compensation is necessary, but have also held that a fair and reasonable compensation is the sine qua non for any acquisition process.

13. In the case in hand, the land belonging to the petitioner has been put to use as a burial ground and this was done even without resorting to any acquisition proceedings. Therefore, either the land has to be restituted the land owner or the



land owner has to be paid a fair compensation.

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14. Considering the fact that the land has been used as a burial ground for a long period of time, it may not be practicable to order for any restitution of the land. Therefore, the relevant compensation can be directed to be paid to the petitioner.

15. In the light of the above discussion, there shall be a direction to the 1st respondent to take immediate steps to compute the compensation payable to the petitioner in line with Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The compensation shall be determined and paid to the petitioner within a period of six months from the date of receipt of copy of the order.

16. Both the writ petitions are disposed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

24.02.2025

Index : Yes/No
NCS : Yes/No
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N.ANAND VENKATESH, J.
KP

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