BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **03.04.2025**

Delivered on : **15.04.2025**

CORAM:

THE HONOURABLE MR JUSTICE P.B. BALAJI

W.P.(MD)No.8551 of 2024
and
W.M.P.(MD)No.7785 of 2024

Sakthivel. M ... Petitioner

/Vs./

The Authorized Officer Cum
Special District Revenue Officer,
Land Acquisition, National Highways,
Pudukkottai. ... Respondent

PRAYER**:** Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the respondent in Additional Award No.71/2018-2019 Na.Ka.22/2019 dated 22.09.2023 and quash the same in so far as the reduction of 1/3rd of the land value originally fixed/determined and consequently direct the respondent to provide the compensation as per value originally fixed/determined and also disburse the admitted balance amount of Rs.27,67,674/- within the time frame fixed by this Court.

For Petitioner : Mr.R.V.Rajkumar

For Respondent : Mr.M.Lingadurai
Special Government Pleader

ORDER

The petitioner challenges the order of the respondent in Additional Award No.71/2018-2019, Na.Ka.22/2019, dated 22.09.2023 and quash the same insofar as the reduction of 1/3rd of the land value originally determined and to consequently direct the respondent to provide the compensation in terms of original award and also disburse the admitted balance amount of Rs.27,67,674/- within the time frame.

2. I have heard Mr.R.V.Rajkumar, learned counsel appearing for the petitioner and Mr.M.Lingadurai, learned Special Government Pleader appearing for the respondent. I have also gone through the records, including the impugned order.

3. The case of the petitioner is that the lands comprised in S.No. 272/45 measuring 51 cents, situated at Patharakudi Village, Patharakudi

Panchayat, Managiri Sukkanendhal Group, Kallal Union, Karaikudi Taluk, was originally belonging to one A.Subaida Begam from whom the petitioner purchased 105 sq.mtrs. (C9 in Block-C), under registered sale deed dated 25.01.2012. Subsequent to the purchase,the petitioner was also granted patta and the property was subdivided as S.No.272/45B. The petitioner, thereafter, had applied for a housing loan in December – 2014 and constructed a house, where the petitioner is residing with his wife.

4. While so, the lands in S.No.272/45 were sought to be acquired by the National Highways Authority of India for formation of four way road, connecting Melur – Karaikudi National Highway No.383. Admittedly, Section 3A(1) of National Highways Act,1956 (Act 48/1956) was published in the Government of India Gazette on 09.05.2018 and paper publications were also effected on 16.05.2018 and 17.05.2018. The petitioner, though objected to the acquisition, the objections overruled and award came to be passed on 17.02.2023.

5. However, according to the petitioner, Additional Award, which is impugned in the present writ petition was passed unilaterally, reducing the value of the land from Rs.892.43 per sq.m to Rs.594.95 per sq.m. citing that the petitioner's land was unapproved. The reduced award amount was not paid and the balance alone was settled to the petitioner. The petitioner challenges the additional award on the ground that it is the case of the respondent that the lands are Government lands and there has been violation of assignment condition is false. Therefore, he contends that the petitioner is entitled to compensation, originally arrived at.

6. The learned counsel for the petitioner would further attack the deducting of 1/3rd amount, contending that though the deduction is sought to be made citing a circular issued by the Commissioner of Land Administration, the learned counsel would submit that same is contrary to the mandate of Section 105(3) of the Act 30/2013, and therefore deduction was never required, especially, since the petitioner's house site was approved by the local body, even as early as on 17.05.2010 and on the date of notification, the lands were already developed. As regards the reliance placed on by the respondent, in the counter affidavit, on the

circular dated 06.01.2021, justifying the deducting of of 1/3rd , the learned counsel would submit that even in the very same circular in cases of land acquisition, where lands acquired were abutting existing State Highways, such deduction was exempted and therefore, he would submit that the circular was in fact only in favour of the writ petitioner.

7. The learned counsel for the petitioner would place reliance on the following decisions:

(i) ***State of Uttaranchal and others V. Kharak Singh*** reported in ***2008-8-SCC-236***

(ii) ***Naresh Kumar and others v. Government (NCT of Delhi)*** reported in ***2019-9-SCC-416***

(iii) ***Rajeev Hitendra Pathak and others V. Achyut Kashinath Karekar and another*** reported in ***2011-9-SCC-541***

(iv) A judgment of the Division Bench of this Court reported in ***2007-Writ L.r.-905 (Union of India & two others V. M.M.Cholan and two others)***

8. Per contra, Mr.M.Lingadurai, learned Special Government Pleader, would justify 1/3rd deduction towards development charges and contend that deduction would not apply only in case of linear acquisitions undertaken by the State of Highways, where lands to be acquired, abutted existing State Highways. He would further submit that the acquired lands and adjourning lands have been classified as "Government wet waste" and assigned to one Neivathal for cultivation purpose, who has exploited the said lands commercially by converting the same into plots and having sold it without permission from the appropriate authority, he would state that the petitioner cannot claim any compensation at all. However, the respondent has not denied compensation and they only reduced compensation by 1/3rd in accordance with prevailing Rules. and therefore, he would pray for dismissal of the writ petition.

9. I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the records including the typed set of papers filed by the learned counsel for the petitioner as well as the learned Special Government Pleader. I have also gone through the decisions on which, reliance placed on by the learned counsel for the petitioner.

10. It is seen from the UDR 'A' register, which has been relied on by the learned Special Government Pleader, the lands in survey No. 272/45, which was subjected to acquisition by the National Highways Authority of India was originally belonging to one Neivathal and patta was also issued in her favour. There is nothing to show that the said survey No.272/45 was classified as "Government wet waste" and that it was assigned in favour of Neivathal. Neither in the counter affidavit nor in the additional counter affidavit, the respondent has been able to demonstrate that the lands were assigned to said Neivathal with such conditions. Therefore, I am unable to countenance the said submission of the learned Special Government Pleader that the lands have been assigned to Neivathal with conditions and that the conditions were violated and therefore, the petitioner cannot seek compensation. In any event, as seen from the impugned order, the respondent himself has not denied compensation to the petitioner, but has only reduced compensation by 1/3rd. Therefore, there is no merit in the argument advanced by the learned Special Government Pleader that the lands are Government lands and that it was assigned to one Neivathal and that the

said assignee violated the conditions and therefore, the petitioner, who has acquired interest from the said assignee is not entitled to compensation.

11. Insofar as the deduction of 1/3rd of land value, it is the contention of the respondent that the Commissioner of Land Administration has issued a circular in M2/7304/2018 dated 16.10.2020, where he has directed deduction of 1/3rd from the compensation amount payable on the acquired lands, when lands were agricultural lands or undeveloped lands. However, in the present case, the writ petitioner having purchased the land has also been issued patta and even housing loan was approved by the Bank for putting up construction. Further, it is seen that as early as on 17.05.2010, the competent authority had approved the lay out and the petitioner has thereafter put up construction as well. It is also pointed out that similarly placed adjacent plot owners have also put up construction and therefore, the lands were already developed and there is no question of deduction of 1/3rd in the value of the land.

12. The learned counsel for the petitioner would rely on the decision of the Hon'ble Supreme Court in ***Ram Lakhan Singh V. State Government of Uttar Pradesh*** reported in ***2015-8-MLJ367(SC),*** the Hon'ble Supreme Court held that when the State filed a counter affidavit disclosing certain information, but however, no material in support of such statements or allegations are made available to the Court then the defence taken by the State cannot even be looked intoor considered. . This decision is relied on by the learned counsel for the petitioner to contend that though the respondent in the counter affidavit, as well as in the additional counter affidavit, states that the lands were originally assigned and that there has been violation of assignment conditions, no such assignment order or conditions of assignment have been produced before this Court. This decision therefore squarely appling to the facts of the present case.

13. In ***Rajeev Hitendra Pathak'***s case, the Hon'ble Supreme Court held that once an authority passes an order, no power was available to the same authority to recall the order and pass a fresh order.

14. In ***Naresh Kumar***'s case, the Hon'ble Supreme Court held that review of an award after it attained finality is impermissible. In that case deduction of compensation treating some structures as illegal was held to be reviewed after the award and the same was held to be impermissible and the same was set aside. In the present case also, as the award has already been passed determining the compensation payable to the petitioner, subsequently, the very same authority has chosen to pass additional award unilaterally and arbitrarily, without any notice to the writ petitioner. There is no source of such power in the Act, to enable the respondent to pass such an additional award and reduced the compensation awarded. The said exercise undertaken by the respondent is clearly violative of statutory principles and is liable to be set aside.

15. Even leaving aside the lack of power to pass an additional award, I have already found that the lands were already developed and therefore, the respondent was in any event not justified any deducting 1/3rd amount. Further, having already passed an award as already discussed above and no power of review being available to pass an additional award additional amount, the petitioner is entitled to relief.

16. For all the above reasons, the impugned order passed by the respondent is quashed and the respondent is directed to release the balance amount of Rs.27,67,674/- within a period of eight weeks, together with any applicable interest, from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No **15.04.2025**
NCC : Yes / No
LS

TO:-

The Authorized Officer Cum
Special District Revenue Officer,
Land Acquisition, National Highways,
Pudukkottai .

P.B. BALAJI, J.

LS

Order made in
W.P.(MD)No.8551 of 2024

Dated:
15.04.2025