

(2014) 09 MAD CK 0340

In the Madras High Court

Case No : Writ Petition Nos. 5684 to 5713 of 2014, 17457 to 17463 of 2014 and 17633 to 17638 of 2014

N. Periyasamy

APPELLANT

Vs

The Secretary to Government

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9
Constitution of India, 1950 — Article 226
National Highways Act, 1956 — Section 3C

Citation : (2014) 09 MAD CK 0340

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Judgement

B. Rajendran, J.—Since the issue involved in all these Writ Petitions are common, all these Writ Petitions are taken up together and disposed of by this common order.

2. The prayer in all these writ petitions is for the issuance of a writ of mandamus to direct the respondents herein to pay to the petitioners fair, reasonable and equitable compensation for the entire lands acquired in Ammapet and Erumapalayam in Salem District and for the demolition of the buildings thereon for the up-gradation and widening of the then existing two lane into four lane divided carriageway configuration of Salem-Ulundurpet section of National Highways NH-68 in the State of Tamil Nadu.

3. The grievance of the petitioners in all these cases is that though their lands were acquired for the up-gradation and widening of the then existing two lane to four lane divided carriageway configuration of Salem-Ulundurpet section of National Highways NH-68 in the State of Tamil Nadu and the project also has been completed, till date no compensation has been fixed or paid to them because the District Collector, who is also an Arbitrator has not fixed the valuation even though there is an earlier direction that they should be disposed

of within a period of three months. Aggrieved against the non-fixation of the compensation, the present writ petitions have been preferred by the land owners.

4. Learned counsel appearing on behalf of the second respondent by relying upon the counter affidavit filed would submit that in all the cases the rate of compensation has been fixed taking into consideration the sale transactions that had taken place in and around the places of acquisition. She would further submit that the Competent Authority also conducted enquiry under Section 3C of the National Highways Act, 1956 and received objections from the land owners. The objections were scrutinized with relevant documents and some of them were dismissed on merits. In certain cases, the petitioners have even received full compensation. Thereafter, now they seek enhanced compensation and that is now pending before the Arbitrator. Hence, this is not a question of non-payment of compensation alone. Therefore, she would contend that there is no illegality in either the acquisition or in making the payment and it is always open to the aggrieved parties to approach the appropriate authority, viz., the Arbitrator for necessary relief and not by way of filing writ petitions seeking mandamus.

5. Heard both sides.

6. When the matter is taken up for hearing today, the learned counsel appearing for the second respondent brought to the notice of this Court, the earlier order passed by the First Division Bench of this Court in W.P. No. 32197 of 2012 dated 04.12.2012, wherein it was ordered as follows:

"3. After hearing the learned counsel appearing for the petitioner and Mr. P. Wilson, learned Senior counsel appearing for the National Highways Authority of India, we feel that the claim of each farmer for higher compensation shall be decided independently, as the same cannot be decided in a representative capacity. Therefore, the writ petitioner and the concerned farmers, if so advised, may file individual claim petitions for enhancement of compensation. Needless to say that if such claim petitions are filed, the third and fourth respondents-Collectors of Villupuram and Salem Districts, shall decide the same as expeditiously as possible, preferably within a period of three months from the date of filing claim petitions."

Since the same has not been complied with, the individuals joining together have filed these writ petitions separately. At this stage, the learned counsel appearing for the second respondent once again brought to the notice of this Court, the latest judgment passed by the present First Division Bench dated 20.08.2014 in O.S.A. No. 141 of 2013 in respect of the very same acquisition, which arose against the order passed in the application under Section 9 of the Arbitration and Conciliation Act, 1996 filed by one of the land owners in the Arbitration proceedings. The relevant paragraphs are extracted hereunder for ready reference:

"4. In order to put an end to controversy, we direct the Collector/Arbitrator to carry out the inspection of the building in the presence of both the parties and

representatives of the Public Works Department for the purpose of clarity as to the valuation of the building. Thereafter, the appellant will cause no obstruction to the demolition of on the building and utilisation of the area by the respondents.

5. This exercise be carried out within two months from today. The Collector/ Arbitrator will also endeavour to conclude arbitration proceedings within a period of six months from the date of communication of the order.

6. The learned counsel for the appellant at this stage points out the difficulty in concluding the arbitration proceedings under the National Highways Act, 1956, on account of the fact that the Collector has been appointed as the competent authority/arbitrator as per the Notification of the Central Government issued in the official gazette. The consequence of this is, in the acquisition proceedings, the Collector concerned acts as an Arbitrator and the result is the arbitration proceedings go on for a long period of time, as the Collector has various other functions to perform. Not only that, the assessment of compensation is based on the evidence led by the parties. He, thus, suggests that it would be appropriate to have, possibly, Retired District Judges appointed for the said purpose rather than the Collector of the District, who is, as it is, overburdened with his own responsibilities.

7. We call upon the National Highways Authority of India to examine the issue of pendency of such arbitrations and as to how many such cases are pending.

In order to facilitate an early disposal, some methodology should be evolved in consultation with the parent Ministry of the Union of India.

8. The National Highways Authority of India to undertake this exercise within a period of three months from today."

In the said case also the Collector was directed to immediately expedite the matter and complete the Arbitration proceedings within a period of six months. Of course, the First Division Bench has also directed the National Highways Authority to examine the issue of pendency of such arbitrations and to evolve some methodology to dispose of the same within a period of three months from the date of the said order. The learned counsel for the second respondent also further referred to yet another judgment passed by this Court in W.P. No. 2663 of 2014 dated 10.02.2014, wherein this Court has held thus:

"56. A writ of mandamus, can be issued by the court, in its discretion, for which, it must be shown that, there is a non discretionary legal duty upon the authority against whom, the relief is sought for and that the person approaching the High Court under Article 226 of the Constitution of India, has to prove that he has a legal right to be enforced against the authority, for the failure of performance of a legal or statutory duty, by the authority against whom, the relief is sought for.

57. The reasons adduced by the District Collectors of Salem and Villupuram are genuine and acceptable. In view of the above, the writ petitions are dismissed. The District Collectors, Salem and Villupuram, may take up the arbitration

proceedings in the order of seniority and following the procedure contemplated under the Arbitration and Conciliation Act, 1996, and the same may be disposed of on merits. Connected MP is closed."

As of today, what remains in all these writ petitions is, that the petitioners want the appropriate authority, viz., the Arbitrator/the Collector to fix the enhanced compensation after giving an opportunity to the petitioner by way of Arbitration Proceedings. In view of the same, the Arbitrator/Collector shall carry out all the necessary enquiry and pass appropriate orders, in tune with the order passed by the First Division Bench, within a period of six months, after giving notice to all the parties concerned. The petitioners are also at liberty to raise whatever points available for them, before the Arbitrator/Collector, in accordance with law.

7. With the above direction, all these writ petitions are disposed of. No costs.