
(2014) 10 MAD CK 0100

In the Madras High Court

Case No : W.P. (MD) No. 6909 of 2009 and M.P. (MD) Nos. 3 to 5 of 2009

P. Subbiah

APPELLANT

Vs

The Authorized Officer

RESPONDENT

Date of Decision : 09-10-2014

Acts Referred:

National Highways Act, 1956 — Section 3(A)(1), 3(E)(2)

Citation : (2014) 10 MAD CK 0100

Hon'ble Judges : V.M. Velumani, J

Bench : Single Bench

Judgement

V.M. Velumani, J.—The petitioners have filed this writ petition calling for the records relating to the impugned order issued by the 1st respondent herein in his proceedings Nil, dated Nil, which was signed on 19.05.2009 relating to the lands situated in Survey Nos. 38/1, 38/2 and 38/3 Nalatinpudur Village, Kovilpatti Taluk, Tuticorin District and quash the same and consequently forbearing the respondents herein from in any manner dispossessing the petitioners from building and remaining lands comprised in Survey No. 38/1, 38/2 and 38/3 Nalatipudhur Village, Kovilpatti Taluk, Tuticorin District.

2. Petitioners are the owners of land and building situate in Survey Nos. 38/1, 38/2 and 38/3 Nalatinpudur Village, Kovilpatti Taluk, Tuticorin District. The petitioners were running a motel for 18 years and they are residing in the first floor of the building.

3. The second respondent on 16.11.2005 published a notification under Section 3(A)(1) of the National Highways Act 1956 to acquire several lands situated in Chavalapperi Village, Nalatinpur Village and Chinnapudupatti Village in Tuticorin District for the purpose of widening the National Highway No. 7 within the limit of Kovilpatti Taluk. Objections were called for and 21 days time was given to the owners to submit their objections to the second respondent, the authorised officer cum District Revenue Officer, Tuticorin District.

4. The petitioners submitted their objections on 06.12.2005. The second respondent called the petitioners for enquiry on 19.1.2006. The petitioners appeared for enquiry on that date and gave their objections. On 02.3.2006, the second respondent rejected the objection of the petitioners.

5. There was no business in the motel run by the petitioners since the land in front of motel was acquired by the respondents. The respondents closed down their motel business, thereby incurring heavy loss. The petitioners came to know that the third respondent was issuing cheques for compensation for the acquired lands. The petitioners appeared before the third respondent for compensation. Third respondent informed that compensation for petitioners' land was withheld due to pendency of two suits in Civil Court.

6. According to the petitioners, one Seeniammal filed suit for partition. The suit was decreed granting 1/3rd share in the vacant land and rejected her claim over building and furnitures. The First Appeal filed by petitioners were dismissed. The petitioners have filed S.A. No. 323 of 2003 before this Court and this Court granted interim stay in C.M.P. No. 302 of 2003.

7. In the two suits, namely, O.S. Nos. 5 of 1998 and 48 of 2003 filed before the Sub Judge, Kovilpatti, it was held that the purchase of petitioners is valid and the petitioners are entitled to the said land.

8. The petitioners are entitled to compensation in respect of land acquired by third respondent. Even though the petitioners are willing to receive compensation, the respondents are not paying the same. Without paying the compensation, the respondents are trying to take possession of the land acquired from the petitioners.

9. The petitioners have stated that they are having one acre and 10 1/2 cents in northern side of S. No. 38 Nalatinpudhur Village, Kovilpatti Taluk, Tuticorin District. The motel and residential building are situated in S. No. 38/2 on western side of S. No. 38/1. The said approved building was not mentioned in the notification dated 02.11.2005 issued by the second respondent. Contrary to the said notification, on 09.6.2007, the authorities came along with the police to demolish the petitioners' building.

10. The petitioners filed W.P. No(MD). No. 5231 of 2007 challenging the said notification dated 02.11.2005. In the said writ petition, this Court directed the respondents to deposit the award amount within two weeks to the credit of the civil suit. By order dated 26.6.2007 made in W.P(MD). No. 5231 of 2007, this Court directed the petitioners to give a representation to the District Collector within two weeks with regard to their grievance in respect of the buildings and land not mentioned in 3(A)(1) Notification dated 02.11.2005. The District Collector was directed to dispose of the said representation. The petitioners gave representation to the District Collector. The District Collector has not considered the representation till the filing of the present writ petition.

11. The respondents in 3D notification mentioned the entire extent of land sought to be acquired in S. Nos. 38/1, 38/2 and 38/3 whereas in Notification issued under Section 3(A)(1), it has been mentioned as 2873, 2212 and 869 sq mts. Further, the respondents have not mentioned that building in the land in question also would be acquired. The first petitioner applied to Tahsildar, Kovilpatti, to survey the land in S. No. 38 and prepare a plan and he paid necessary charges also. Till filing of the writ petition, the Tahsildar has not measured the land and did not prepare the plan as requested by the petitioner.

12. The first respondent did not pass any orders on the representation given by the petitioners. The Tahsildar did not measure and prepare the plan. Without passing orders on the representation given by the petitioners to first respondent, a xerox copy of the order of the first respondent without any date or proceeding number was served on the petitioners calling upon them to surrender the vacant possession of land acquired within 60 days failing which action would be taken under Section 3(E)(2) of National Highways Act.

13. The petitioners have filed the present writ petition challenging the said order contending that,

(i) The respondents have not followed the procedure;

(ii) Action of the respondents mentioning less extent in 3(D) notification than the extent mentioned in 3(A) notification is illegal; and will deprive the petitioners from receiving proper compensation.

(iii) Threatening to demolish the residential building without notifying in 3(A) and 3(D) notifications is violative of Act and Rules against natural justice.

14. The respondents denied all the averments made in the affidavit. According to the respondents, they have followed the procedure properly. In 3(D)(1) notification, it has been clearly mentioned that "the land" includes the benefits arise out of land and things attached to the earth or permanently fastened to anything attached to the earth. Therefore, the land acquired includes the building standing thereon. As per the directions of this Court, the first respondent measured the acquired land on 06.08.2009 in the presence of the petitioners. Award has been passed and award amount was deposited on 07.08.2007 in the Sub Court, Kovilpatti, as per the directions of this Court. The project had been completed except for the stretch acquired from the petitioners. Hence, they prayed for dismissal of the writ petition.

15. Analysis:

The land measuring 2809, 2168 and 868 sq.mts. in S. Nos. 38/1, 38/2 and 38/3 respectively belonging to the petitioners was acquired. There is no difference in the extent in respect of S. Nos. 38/1 and 38/2 mentioned in 3(A)(1) and 3(D)(1) notifications. The extent mentioned in 3(D)(1) notification is less than what is mentioned in 3(A)(1) notification. The counsel for respondents argued that only the extent mentioned in 3(D)(1) had been acquired and compensation for the

said extent had been deposited in Sub Court, Kovilpatty. Therefore, the contention of counsel for petitioners that due to difference in the extent mentioned in the two notifications would deprive the petitioners from receiving proper compensation, is untenable and unsustainable.

16. The contention of the learned counsel for the petitioners that the building in S. No. 38/2 is not situated in 2212 sq.mts. of land acquired by respondents and respondents failed measure the land and prepare a plan and sketch. The respondents have deliberately failed to prepare and filed a plan/sketch showing the land acquired and the situation of building in S. No. 38/2.

17. Per contra, the learned counsel for the respondents argued that the land in question was measured in the presence of petitioners and learned counsel for petitioners on 06.08.2009 and acknowledgment was obtained from petitioners. The learned counsel for respondent referred to acknowledgment by the second petitioner dated 06.08.2009 and letter dated 17.8.2009 addressed to competent authority. The copies of these two documents were filed in the additional typed set of papers. These two documents do not advance the case of the respondents. The specific case of petitioners is that the building is not situate in the land acquired by the respondents. The respondents have not stated the breadth of the land from the road margin that was acquired from and out of the petitioners' land and has not prepared and filed a plan/sketch in respect of lands in S. Nos. 38/1, 38/2 and 38/3. The petitioners have paid necessary charges and gave an application to Tahsildar, Kovilpatti, to measure the entire S. No. 38 and to prepare a plan and sketch. The respondents have not given any explanation for the Tahsildar for not measuring the land and preparing a plan. Even in the letter dated 17.8.2009, the respondents have not stated that a plan/sketch had been prepared on 06.8.2009 and the building in question is situate in the land acquired from the petitioners. The respondents have filed a working sheet at page 70 of the typed set of papers. The respondents have mentioned the extent of land acquired as 5846 sq.mts. But, the respondents have not mentioned the extent of building standing in the said acquired land, even though a sum of Rs. 16,39,438/- has been awarded as compensation. The respondents have mentioned the rate per sq.mts. for the acquired land. They have not stated the extent of building acquired or rate and failed to state as to how they arrived at the compensation for the building mentioned therein.

18. Conclusion:

For the reasons stated above, I hold that the contentions of the learned counsel for the petitioners that the building is not situate in the acquired land, has considerable force.

19. In the result, the writ petition is allowed. The impugned order of the first respondent is quashed. No costs. Consequently, connected miscellaneous petitions are closed.

20. It is open to the respondents to measure the acquired land properly with the

help of surveyor in the presence of petitioners and prepare a field plan and sketch showing the entire land belonging to the petitioners, the land acquired and the situation of the building. If the entire building or any portion of the building is situate in the acquired land, it is open to the respondents to take possession of the same after specifically mentioning the extent of the building situate in the acquired land and rate of compensation.