

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

W.A.Nos.1018 and 1019 of 2014
& M.P.No.1 of 2014 in each Writ Appeal

K.Moorthy .. Appellant in W.A.No.1018 of 2014

G.Muthu .. Appellant in W.A.No.1019 of 2014

Vs.

1. The Director of Planning,
National Highways Authority of India,
No.6, 1st Floor, 3rd Main Road,
Pon Nagar, Trichy-620 001.

2. The Competent Authority and
District Revenue Officer,
NH-7, 46, 47 and 66,
Salem-Krishnagiri
National Highways Authority of India,
Krishnagiri.

3. The Special Tahsildar (LA),
NH-66, Scheme-1,
Oothangarai.

.. Respondents in both the Writ Appeals

Writ Appeal No.1018 of 2014 filed under Clause 15 of the Letters Patent against the order dated 03.06.2014 made in Writ Petition No.28230 of 2013 on the file of this Court.

Writ Appeal No.1019 of 2014 filed under Clause 15 of the Letters Patent against the order dated 03.06.2014 made in Writ Petition No.28229 of 2013 on the file of this Court.

Writ Petitions filed under Article 226 of the Constitution of India praying to issue writs of Certiorari, to call for the records of the 2nd respondent in his impugned notifications issued in the gazette of India No.1844, dated 18.09.2012 under Section 3-A of the National

Highways Act and the subsequent notification issued in the gazette of India in No.1259, dated 04.06.2013, under Section 3-D of the National Highways Act, with respect to Nayakannur Village Dry S.No.4./2A1, measuring 3150 Sq.Mts., and S.No.4/1B2, measuring 7899 Sq.Mts., and quash the same.

For appellants : Mr.D.Ravichander

For respondents : Mr.P.Wilson, Senior Counsel for
M/s.P.Wilson Associates for R-1

Mr.R.Rajeswaran, Spl.G.P. for RR-2 & 3

JUDGMENT

(The Judgment of the Court was delivered by V.Dhanapalan,J)

Though the miscellaneous petitions are listed for hearing, by consent of the learned counsel appearing for the parties, the Writ Appeals themselves are taken up for disposal.

2. Heard Mr.D.Ravichander, learned counsel for the appellants, Mr.P.Wilson, learned Senior Counsel appearing for the first respondent-NHAI and Mr.R.Rajeswaran, learned Special Government Pleader appearing for the respondents 2 and 3.

3. These Writ Appeals are directed against the order of the learned single Judge in W.P.Nos.28229 and 28230 of 2013, dated 03.06.2014.

4. The writ petitioners, the appellants herein, who are the land owners, approached the Writ Court praying for issuance of Writs of Certiorari to call for the records in respect of the acquisition of the lands in question and to quash the same.

5. It was contended before the learned single Judge that the National Highways Authority of India (for short, 'NHAI') decided to acquire the lands for formation of National Highways from Tindivanam to Krishnagiri and accordingly, a Notification was issued under Section 3-A of the National Highways Act (for short, the Act') on 18.09.2012. It was claimed that even prior to the issuance of the Notification, the writ petitioners have represented before the competent authority (second respondent) that they have sent a letter on 16.04.2012, objecting to the acquisition of the lands. But the objections have not been taken into account and the authority has issued summons to the writ petitioners to participate in the enquiry, vide communication dated 04.09.2013. They were informed that the Notification under Section 3-D of the Act has already been issued and therefore, question of considering the objections does not arise.

6. The said claim of the appellants/writ petitioners had been resisted by the first respondent/NHAI by filing counter affidavit, stating that the NHAI has taken up the project of improving the NH-66 in the stretch from Tindivanam to Krishnagiri for rehabilitation and upgradation of the two lanes with paved shoulders configuration of the stretch with by-passes for built up area of the towns. The Project Implementation Unit, Villupuram has been entrusted with the task of implementation of the above Project and the second respondent has been appointed as the competent authority for acquisition of the private properties required for formation of the by-pass, re-alignment and widening of the road NH-66. A detailed Project Report has also been submitted and the competent authority initiated action under Section 3-A(1) of the Act and Notification therein was issued on 18.09.2012, notifying the Central Government's intention to acquire the lands, including the lands owned by the writ petitioners and the substance of the Notification under Section 3-A(1) of the Act was also published in the local newspapers on 06.11.2012 in terms of Section 3-A(3) of the Act, for objections, if any from the interested persons, within 21 days from the date of publication in the newspapers. Since no objections under Section 3-C(1) of the Act were filed by the petitioners, no orders were required to be passed by the competent authority under Section 3-C(2) of the Act. Section 3-D Notification was published in the Official Gazette of India on 04.06.2013 and thereafter, the acquired lands vested with the Central Government, free from all encumbrances. Subsequently, newspaper publication for enquiry under Section 3-G(3) of the Act was also published on 31.08.2013 by the competent authority and the enquiry was conducted on 20.09.2013. The writ petitioners have not attended the enquiry and only letter through courier had been received from them requesting three weeks' time to appear for the enquiry. It is the contention of the NHAI that if the objections are not submitted within the time schedule, the authorities are empowered to proceed as per the provisions of the Act.

7. The competent authority also filed counter affidavit before the Writ Court reiterating the issuance of the above Notifications and the other dates and events regarding the acquisition of the land.

8. On the above background of pleadings, it was argued before the Writ Court that the writ petitioners having not preferred any objections within the time stipulated, namely 21 days after paper publication, the competent authority has proceeded to issue the Notification under Section 3-D of the Act for acquisition of the lands.

9. The learned single Judge, on going into the merits of the case and legal position, came to the conclusion that a Writ of Mandamus can be issued by the Court in its discretion, for which, it must be

shown that there is 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 and for the failure of performance of a legal or statutory duty by the authority against whom the relief is sought for. Accordingly, the learned single Judge proceeded to dismiss both the Writ Petitions, against which, the present Writ Appeals have been filed by the appellants/writ petitioners.

10. We have heard the learned counsel appearing for the parties on the above background of pleadings made before the Writ Court and perused the material documents available on record. Similar lines of arguments have been advanced before this Court also.

11. Before proceeding to deal with the matter, for better appreciation of the case, it is to be noted that the prayer in both the Writ Petitions (W.P.Nos.28229 and 28230 of 2013) is for issuance of Writs of Certiorari to call for the records of the second respondent in his impugned notifications issued in the Gazette of India No.1844, dated 18.09.2012 under Section 3-A of the National Highways Act and the subsequent notification issued in the Gazette of India in No.1259, dated 04.06.2013 under Section 3-D of the National Highways Act and quash the same.

12. The learned single Judge proceeded on the basis that the prayer in the Writ Petitions is for issuance of Writs of Mandamus, when the fact remains that the prayer sought for by the writ petitioners is for issuance of Writs of Certiorari, as stated above. In this regard, it is relevant to quote paragraphs 26 to 29 of the order of the learned single Judge, as follows:

"26. Writ of mandamus cannot be issued merely because, a person is praying for. One must establish the right first and then he must seek for the prayer to enforce the said right. If there is failure of duty by the authorities or inaction, one can approach the Court for a mandamus. The said position is well settled in a series of decisions.

(a) In the decision reported in (1996) 9 SCC 309 (State of U.P. and Ors. v. Harish Chandra and Ors.) in paragraph 10, the Apex Court held as follows:

10. ...Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition....

(b) In the decision reported in (2004) 2 SCC 150 (Union of India v. S.B. Vohra) the Supreme Court considered the said issue and held that 'for issuing a writ of mandamus in favour of a person, the person claiming, must establish his legal right in himself. Then only a writ of mandamus could be issued against a person, who has a legal duty to perform, but has failed and/or neglected to do so.

(c) In the decision reported in (2008) 2 SCC 280 (Oriental Bank of Commerce v. Sunder Lal Jain) in paragraphs 11 and 12 the Supreme Court held thus,

11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:

Note 187.-Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192.-Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary,

however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196.-Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

27. When a Writ of Mandamus can be issued, has been summarised in Corpus Juris Secundum, as follows:

"Mandamus may issue to compel the person or official in whom a discretionary duty is lodged to proceed to exercise such discretion, but unless there is peremptory statutory direction that the duty shall be performed mandamus will not lie to control or review the exercise of the discretion of any board, tribunal or officer, when the act complained of is either judicial or quasi-judicial unless it clearly appears that there has been an abuse of discretion on the part of such Court, board, tribunal or officer, and in accordance with this rule mandamus may not be invoked to compel the matter of discretion to be exercised in any particular way. This principle applies with full force and effect, however, clearly it may be made to appear what the decision ought to be, or even though its conclusion be disputable or,

however, erroneous the conclusion reached may be, and although there may be no other method of review or correction provided by law. The discretion must be exercised according to the established rule where the action complained has been arbitrary or capricious, or based on personal, selfish or fraudulent motives, or on false information, or on total lack of authority to act, or where it amounts to an evasion of positive duty, or there has been a refusal to consider pertinent evidence, hear the parties where so required, or to entertain any proper question concerning the exercise of the discretion, or where the exercise of the discretion is in a manner entirely futile and known by the officer to be so and there are other methods which it adopted, would be effective."

(emphasis supplied)

28. 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 and for the failure of performance of a legal or statutory duty, by the authority, against whom, the relief is sought for.

29. In the light of the above discussion and decision, this Court is not inclined to accept the contentions of the petitioners. In the result, both the writ petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed."

13. On a perusal of the impugned order passed by the learned single Judge, more particularly, the discussion part in paragraphs 26 to 28 extracted above and the conclusions arrived at thereon, it would give a clear impression to this Court that the learned single Judge has dealt with the matter as if the prayer sought for by the writ petitioners in the Writ Petitions was for issuance of Writs of Mandamus and proceeded accordingly to arrive at a conclusion to

dismiss both the Writ Petitions. In our considered opinion, the relief sought for in the Writ Petitions is not even for issuance of Writ of Certiorari or Mandamus and it was only for issuance of Writs of Certiorari. That being the position, it is not known as to how the Writ Court has gone into the discussion part to deal with the aspect of issuance of Writ of Mandamus, when the same is not sought for by the writ petitioners. Therefore, we are constrained to set aside the impugned order passed by the learned single Judge and remit the matter back to the Writ Court for fresh consideration in line with the prayer sought for by the appellants/writ petitioners.

14. Article 226 of the Constitution of India empowers the High Court to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions, orders or Writs, including Writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose. Clause (1) to Article 226 of the Constitution of India confers the power to issue directions, orders or Writs to any Government, authority or person, which may be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power. The power conferred under Clause (1) to Article 226 of the Constitution of India, shall be exercised in the manner to issue a particular Writ as contemplated as per the powers and jurisdiction vested in the High Court.

15. Under Article 226 of the Constitution of India, when a prayer is sought to issue a particular Writ, viz., to issue a Writ of Certiorari, the Writ Court has to deal with the case on hand only with respect to the specific Writ in accordance with law and the power and jurisdiction conferred upon. In the instant case, the Writ Court, instead of dealing with the Writ of Certiorari as prayed for, has discussed the case as if the Writ sought is for a Mandamus and dismissed the Writ Petitions.

16. Accordingly, both the Writ Appeals are allowed and the matter is remitted back to the Writ Court for fresh consideration of the Writ Petitions in W.P.Nos.28229 and 28230 of 2013, strictly in consonance with the prayer sought for by the appellants/writ petitioners. The learned Senior Counsel appearing for the first respondent-NHAI made a plea that the delay in implementation of the Project in question would cause serious prejudice to the authority concerned in execution of the Project in time and hence, a direction may be issued for early disposal of the Writ Petitions. Learned counsel for the appellants and the learned Special Government Pleader appearing for the respondents 2 and 3 also made a similar plea. In that view of the matter, we request the learned single Judge to take

up the Writ Petitions in W.P.Nos.28229 and 28230 of 2013 on priority basis and dispose of the same as expeditiously as possible. No costs. The Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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Copy to

1. The Director of Planning,
National Highways Authority of India,
No.6, 1st Floor, 3rd Main Road,
Pon Nagar, Trichy-620 001.
2. The Competent Authority and
District Revenue Officer,
NH-7, 46, 47 and 66, Salem-Krishnagiri
National Highways Authority of India,
Krishnagiri.
3. The Special Tahsildar (LA),
NH-66, Scheme-1,
Oothangarai.

Copy to: The Section Officer, Writ Section, High Court, Madras

1 cc to Mr.D.Ravichander ,Advocate, SR.No.2604

1 cc to M/s.P.Wilson Associates ,Advocate, SR.No.2748

सत्यमेव जयते

W.A.Nos.1018 and 1019 of 2014

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