

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2015

CORAM:

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

W.A.Nos.162,163, 164 and 794 of 2014

W.A.No.162 of 2014 :

1. The Collector of Chennai,
First Line Beach Road,
Chennai 600 001.
2. The Special Tahsildar (LA),
Highways, Mambalam-Guindy Taluk,
Taluk Office Complex,
Ashok Nagar, Chennai 600 078.
3. The State of Tamilnadu,
rep. By its Secretary,
Public Works Department,
Fort St. George, Chennai 600 009.
4. The Chief Engineer (WRO)
Chennai Region, Kamarajar Salai,
Chennai 600 005.
5. The Executive Engineer (PWD),
Lower Palar Basin Division,
Kancheepuram.
6. The Divisional Engineer (Highways)
Project-I, Alandur, सत्यमेव जयते
Chennai 16.

Appellants/Respondents ...

vs.

1. M/s.CeeDeeYes Standard
Towers (P) Limited,
rep. By its Managing Director,
No.42, Second Main Road,
Gandhi Nagar, Adyar,

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Chennai 600 020.

2. Chennai Metropolitan Development Authority, rep. By its Chairman-cum-Managing Director.

(R2 - given up)

Respondents/Petitioner
3rd Respondent.

W.A.No.163 of 2014 :

1. The Collector of Chennai,
First Line Beach Road,
Chennai 600 001.
2. The Special Tahsildar (LA),
Highways, Mambalam-Guindy Taluk,
Taluk Office Complex,
Ashok Nagar, Chennai 600 078.

Appellants/Respondents

vs.

M/s.CeeDeeYes Standard
Towers (P) Limited,
rep. By its Managing Director,
No.42, Second Main Road,
Gandhi Nagar, Adyar,
Chennai 600 020.

.... Respondent/Petitioner

W.A.No.164 of 2014 :

1. The Collector of Chennai,
First Line Beach Road,
Chennai 600 001.
2. The Special Tahsildar (LA),
Highways, Mambalam-Guindy Taluk,
Taluk Office Complex,
Ashok Nagar, Chennai 600 078.
3. The Commissioner (ULC)
Alandur, Chennai 16.

4. The Executive Engineer (PWD),
Kancheepuram.

5. The Secretary,
Highways Department,
Government of Tamilnadu,
Fort St. George,
Chennai 600 009.

... Appellants/Respondents

vs.

M/s.CeeDeeYes Standard
Towers (P) Limited,
rep. By its Managing Director,
No.42, Second Main Road,
Gandhi Nagar, Adyar,
Chennai 600 020.

... Respondent/Petitioner

W.A.No.794 of 2014 :

Chennai Metropolitan Development Authority,
rep. By its Chairman-cum-
Managing Director.

... Appellant/3rd Respondent

vs.

1. M/s.CeeDeeYes Standard
Towers (P) Limited,
rep. By its Managing Director,
No.42, Second Main Road,
Gandhi Nagar, Adyar,
Chennai 600 020.

2. The Collector of Chennai,
First Line Beach Road,
Chennai 600 001.

3. The Special Tahsildar (LA),
Highways, Mambalam-Guindy Taluk,
Taluk Office Complex,
Ashok Nagar, Chennai 600 078.

4. The State of Tamil Nadu,

rep. by its Secretary,
Public Works Department,
Fort St. George, Chennai 600 009.

5. The Chief Engineer (PWD)
Chennai Region,
Kamarajar Salai, Chennai 600 005.
6. The Executive Engineer (PWD),
Lower Palar Basin Division,
Kancheepuram.
7. The Divisional Engineer (Highways),
Project-I, Alandur,
Chennai 600 016.

... Respondents

Writ Appeals filed under Clause 15 of the Letters Patent against the common order dated 21.02.2013 made in W.P.Nos.39261 of 2003, 4341 of 2004 and 26794 of 2004.

WP No.39261/2003: Petition presented under Article 226 of the Constitution of India for the issuance of a writ of certiorari calling for the records relating to the notice in Form A and dated nil issued on behalf of the first respondent purporting to be under Section 15 (2) of Tamilnadu Highways Act, 2001 and to quash the said notice and to grant such further relief or reliefs.

W.P. No.4341/04: Petition presented under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records in reference No.MG/LA1/2002, from the file of the first respondent and to quash the order dated 16.12.2003 made therein.

W.P. No.26794/04: Petition presented under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records relating to the notice in Form A and dated 22.07.2004 in ref. No.MG/LA1/2002 issued on behalf of the first respondent purporting to be under Section 15(2) of Tamilnadu Highways Act, 2001 and to quash the said notice.

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For Appellants in W.A.Nos.162 to 164/2014 and Respondents 2 to 7 in W.A.No.794/2014	Mr.P.H.Arvinth Pandian Addl. Advocate General assisted by Mr.R.Rajeswaran, Special Govt. Pleader
For Appellant/CMDA in W.A.No.794/2014	Mr.K.Raja Srinivas
For Respondent in W.A.Nos.163 & 164/2014; For 1 st Respondent in W.A.No.162/2014 & W.A.No.794 of 2014	Mr.R.Thiagarajan, Senior Counsel for Mr.N.Premkumar

C O M M O N J U D G M E N T
(Judgment of the Court was delivered by V.Dhanapalan,J.)

Heard Mr.P.H.Arvinth Pandian, learned Additional Advocate General with Mr.R.Rajeswaran, learned Special Government Pleader appearing for the appellants in W.A.Nos.162 to 164 of 2014 and respondents 2 to 7 in W.A.No.794 of 2014; Mr.K.Raja Srinivas, learned counsel appearing for the appellant/CMDA in W.A.No.794 of 2014 and Mr.R.Thiagarajan, learned Senior Counsel appearing for the respondent in W.A.Nos.163 & 164 of 2014 and for the 1st Respondent in W.A.Nos.162 and 794 of 2014.

2. All these appeals arise out of a common order dated 21.02.2013 passed by the learned Single Judge in W.P.Nos.39261 of 2003, 4341 of 2004 and 26794 of 2004, wherein the learned Single Judge decided the matter on the ground that the road in question was not declared as Highway and no material whatsoever has been produced before this Court in that regard. The learned Single Judge further held that issuance of notification under Section 15(2) of Tamil Nadu Highways Act, 2001 (in short 'Act') without complying with the requirement under Section-8 would only reflect the arbitrary exercise of power.

3. Facts of the case are as follows:

3.1. M/s.CeeDeeYes Standard Towers (P) Limited, (hereinafter referred to as 'Company') purchased land of an extent of about 48,000 sq. ft. comprised in Survey No.329 of Velachery Village, Chennai District vide Sale Deeds dated 08.07.2003 and 04.08.2003 registered as Document Nos.2872 to 2883 and 3329 to 3340/2003 on the file of the Sub-Registrar, Velachery for the sale consideration of Rs.5,52,00,000/-. They put up a multi-storeyed building of the built up area of about 1,30,000 sq. ft. consisting of stilt floor + eight

upper floors on the said land as per the plan sanctioned by the Chennai Metropolitan Development Authority (in short 'CMDA') and after the completion of the said building, they also let out the said building to M/s.Sutherland Technologies Limited and that the said tenant had also occupied the same.

3.2. While so, the Company was served with a notice by the Collector of Chennai on 20.10.2003 under Section 15(2) of the Act and on receipt of the same, the Company sent their preliminary objections on 12.11.2003 specifically stating interalia that the said notice is vague, per se defective and bereft of material particulars, calling upon the Collector of Chennai to furnish the copies of proposals issued by the Public Works Department (PWD), CMDA, etc. It is his averment that the notice is only a printed form describing the Company as interested person and notifying that a land of an extent of 22 ½ cents in Survey No.329, Velachery Village is proposed to be acquired for formation of inner ring road, however, no relevant details are furnished with respect to the proposed acquisition, but mentioning it as Ra-Nanjai land.

3.3. On receipt of the preliminary objections of the impugned notice, the Collector of Chennai sent a communication dated 21.11.2003 permitting the Company to peruse the required particulars from the office of the Special Tahsildar (LA), Highways Mambalam-Guindy Taluk. However, on 27.11.2003, the Special Tahsildar (LA) permitted the Company to peruse the combined sketch and the land plan schedule prepared by the Divisional Engineer, Highways, Project I, on 22.08.2003 and when their counsel perused a letter dated 14.05.2003 from the Divisional Engineer, Highways, Project I, to the Special Tahsildar (LA) directing the exclusion of the land situate opposite to their land from acquisition, the Special Tahsildar (LA) removed the file from them and denied perusal of relevant particulars. Therefore, the Company sent a representation on 27.11.2003 and thereafter filed W.P.No.37419 of 2003 before this Court.

3.4. For undertaking flood alleviation measures, an improvement of storm water drainage system in Velachery, the Government of Tamilnadu issued an order in G.O.Ms.No.321 (Housing and Urban Development Department), dated 12.08.1988 by linking Velachery Tank and Pallikaranai marsh, which is known as "Velachery - Pallikaranai Drainage course". The CMDA was to act as the nodal and co-ordinating agency for the purpose of obtaining loan for the said project from HUDCO and to ensure the repayment of the said loan. For implementing the remedial measures required for providing flood relief to Velachery area, the Chief Engineer (PWD) requested the Government of Tamilnadu to sanction a sum of Rs.8,30,00,000/- and the said sum was

sanctioned vide G.O.Ms.No.1 (Housing and Urban Development (UD III (2)) Department), dated 09.01.2003.

3.5. In the meantime, the Executive Engineer (PWD), Lower Palar Basin Division, Kancheepuram, prepared the plan showing the details of the land for Velachery-Pallikaranai drainage course in Velachery Village, wherein, it was specifically mentioned that a portion of land in Survey Nos.345 and 346 of Velachery Village is to be acquired for the said drainage course.

3.6. According to the Company, their land comprised in Survey No.329 of Velachery Village abuts the existing 80 feet wide Tambaram-Velachery road on its eastern side. Originally, it was proposed to acquire 20 feet of land on both sides of the said road i.e. on the western and eastern side of the said existing Tambaram-Velachery road. The CMDA issued planning permit No.B/18872/264/A/D/95 for the construction of building in Survey Nos.345 and 346 of Velachery Village which abuts Tambaram-Velachery main road on the western side on the specific condition in the entire stretch of land abutting the said road to a depth of 35 feet is to be left open for the purpose of road widening pursuant to the communication in Letter No.3130/92/ dated 08.02.1995 from the Divisional Engineer Highways, (Tamilnadu Urban Development Project), Chennai 600 015 to the CMDA, but a multi-storeyed building consisting of ground + three floors has been constructed thereon without leaving such open space specifically notified by the CMDA by totally deviating from the plan sanctioned and in contravention of Tamilnadu Town and Country Planning Act and Development Control Rules made thereunder and more particularly by blocking the culvert No.11 on the way leading to Vijayanagar V Main Road, Velachery. It is the further averment of the Company that there are other buildings constructed in Survey No.346 of Velachery Village and on the poramboke lands abutting Tambaram-Velachery Road and Bypass road.

3.7. It is the contention of the Company that the Collector of Chennai and Special Tahsildar (LA) are acting mala fide by entertaining representations from promoters/owners of the said buildings constructed in Survey Nos.345 and 346 to exclude their property from the proposed acquisition for widening Tambaram-Velachery road and that the Divisional Engineer, Highways, Project I, Chennai 600 016 has issued a letter dated 14.05.2003 in Reference No.210/98/LA/JDO to the Special Tahsildar (LA) directing him to exclude the lands in Survey Nos.346, 331, 320, etc from acquisition for widening Tambaram-Velachery main road and to compensate the same to acquire more land to the extent of 35 ½ cents on the eastern side of the said road. He would further contend that if such land is

acquired, their building of the built up area of about 1,30,000 sq. ft. will be rendered useless and irreparable loss will be caused. Stating that there are about 1400 employees of their tenant working in the said building and and that about 135 car parks have been provided as per Rules, the Company has stated that on account of the proposed acquisition into their land, they will lose 65 car parks and more particularly the Ring Main Gear Room for high tension electricity supply to their building and the panel board room constructed as per the norms of TNEB have to be demolished and there is no other suitable place for such essential utility.

3.8. Challenging the impugned notice of the District Collector, Chennai that the same is without jurisdiction, nonest in law and exhibits malafide on the part of the authorities concerned, the Company approached the Writ Court in W.P.Nos.39261 of 2003, 4341 of 2004, 26794 of 2004.

4. This Court, after hearing the learned counsel on either side and on a perusal of the material records, by a common order dated 21.02.2013, ordered the said Writ Petitions with the following observation.

"6. In fact, a Division Bench of this Court, in R.Kumar vs. State of T.N. (2007 (2) MLJ 384), had an occasion to deal with Section 8(4)(a) of the Act in a case connected to OMR Road presently called IT Corridor coming under the jurisdiction of the Tamil Nadu Highways Act, and concluded as follows:

"Hence, we hold that once it is a Highway, Highway authorities can fix different building line and control line for such highway."

In the present case, the road in question was not declared as Highway and no material whatsoever has been produced before this Court in that regard. That being so, in my considered view, issuance of notification under Section 15(2) without complying with the requirement under Section-8 would only reflect the arbitrary exercise of power.

Though the difference between Sections 8(1)(2) & (3) and 8(4) of the Act is subtle, that makes a huge difference in working out of this Act, when Section 8 (1)(2) & (3) envisages for issuance of Notification calling for objections from the landowners to fix the Highway boundary, boundary line, building line, sub-Section 4 being notwithstanding clause does not say

that the Government may refrain from fixing the Highway boundary when it says, the Government may refrain from fixing the building line or control line for such highway. In view of this difference in the application of the provision, resorting to Section 15(2) of the Act to acquire the petitioner's land without first complying Section 8 is arbitrary exercise of power.

7. Further, earlier, this Court had passed an order of interim stay of dispossession alone on 03.03.2004 and that does not mean that the respondents should keep quiet from passing the Award. Admittedly, till now, the respondents have not passed any Award in respect of the land in dispute. A letter, dated 12.04.2012, in Rc.Lr.No.MG/LA-001/2002, written by one G.Sornam Amutha, Special Tashildar (LA), Highways, Mambalam-Guindy Taluk at Collector's Office, Chennai-1, addressed to the Divisional Engineer (Highways), Projects, Division-I, Chennai-44 also admits the case of the petitioner that no Award or compensation has been paid to the land owner. Hence, it is necessary to extract below the relevant portion of the said letter,

"In this regard, I wish to state that the Principal Secretary and Commissioner of Land Administration in Lr.No.M2/13702/2010, dated 28.05.2010 instructed that since the stay was granted for dispossession alone and that the Hon'ble High Court ordered that other proceedings to go on, in this case except 9% interest award has to be passed giving interest 12% additional market value to the land owner and that the particular piece of land has to be included for passing the draft award in consultation with the Government Pleader. Accordingly, draft award was passed except for 9% interest, only to proceed further after the outcome of pending case by the Hon'ble High Court. Since the W.P.No.39261/2003 is still pending before the Hon'ble High Court, no further action was taken in this regard and no money as compensation has been paid to the land owner so far."

Therefore, having regard to the above lapse that neither any Award has been passed nor the owner of the

land/interested person has been paid with the compensation till date coupled with the other lapse that the Highways Authority issued the impugned notices without complying with the pre-requisites by issuing a Notification under Section 8(1) of the Act fixing Highway Boundary, building line or control line and without even issuing notice as per Section 8(2)(b) of the Act to the person/persons likely to be affected by such notification, it can only be concluded that issuance of the notices under Section 15(2) is nothing but arbitrary exercise of power. Therefore, the District Collector has wrongly exercised the powers authorised to him through G.O.Ms.No.206, Highways (HN2) Department, dated 29.09.2003 without following the procedure as contemplated under Section 8. Further, when the respondents have not even passed the Award till now, giving compensation to the land owner/petitioner herein, on this ground also, the entire proceedings fall to ground. However, since the petitioner, by his letter dated 03.04.2002, which finds place at Page No.291 of the typed set of papers, voluntarily came forward to hand over the land in dispute to the respondents on condition that the petitioner is given the TDR benefits by the CMDA, whereupon, he is also prepared to file an application for withdrawal of the Writ Petition making it clear that he will not make any claim for compensation which will run to about fifty lakhs rupees, this Court finds all justification to accepted such balanced plea.

8. Even though Mr.K.Rajasrinivas, learned counsel appearing for the CMDA argued that the petitioner's land was acquired long time ago by paying compensation and when the same became subject matter of dispute, the CMDA granted TDR; therefore, once again, the petitioner cannot ask for TDR benefit, such argument appears to be as vague as it is for the reason that there is no pleading in that regard and further, no document whatsoever has been filed by the CMDA to substantiate that the petitioner's land covered by the present impugned notices were acquired on earlier occasion by paying compensation and to show transfer of TDR benefits. Therefore, the unreasonable stand of the CMDA that they are even prepared to pay more value viz., Rs.50 lakhs to the petitioner by defraying the public exchequer instead of granting TDR benefits is

wholly misconceived.

9. In the above circumstances, this Court, after finding that the impugned notices issued under Section 15(2) of the Act are vitiated for the reason that the respondents have not followed the pre-requisites as mentioned in Section 8 of the Act and also by taking not of the fact that no award has been passed to pay compensation to the petitioner and further, by keeping in mind the highway widening work involving utmost public importance should be allowed to continue and it should not be stultified, directs the respondents to grant, in lieu of the compensation based on current market value, TDR benefits in favour of the petitioner/M/s.CeeDeeYes Standard Towers Private Limited, who are the registered owners of the property as they have undertaken not to claim for compensation based on today's market value, within a period of two months from the date of receipt of a copy of this order, failing which, the impugned notices shall stand quashed, in which event, needless to mention that the respondents are at liberty to proceed afresh in terms of the Act by following Sections 8 and 15 thereof including payment of compensation for the land on today's market value, if not paid earlier to the petitioner. Writ Petitions are ordered on the above terms. Connected Miscellaneous Petitions are closed."

Challenging the said common order of the Writ Court, the authorities concerned as also the CMDA have come up with the present Writ Appeals.

5. Learned Senior Counsel appearing for the Company, i.e. M/s.CeeDeeYes Standard Towers Private Ltd., at the threshold, initially contested the matter for claiming TDR within the time frame as directed by the Writ Court, as it was not open. On instructions, he would submit that since as on date there was no payment of compensation to the Company, the order of the Writ Court that the impugned notice shall stand quashed has to be taken into account.

6. Learned Additional Advocate General appearing for the appellants in W.A.Nos.162 to 164 of 2014 and respondents 2 to 7 in W.A.No.794 of 2014, by pointing out to paragraph 6 of the impugned order of the Writ Court would seriously contend that there is an error on the factual matrix.

7. On the above background circumstances and pleadings, we have heard the learned counsel appearing for the parties and perused the materials available on record.

8. At the threshold, the matter in question has to be decided on two aspects. Firstly, on the factual error committed by the learned Writ Court observing that the road in question was not declared as a Highway on the ground that no material whatsoever was produced before this Court and secondly, the material information which has not been placed before the Writ Court, i.e. the initial notification of the Government published in Tamil Nadu Government Gazette dated 22.10.2003 in Part II-Section 2 as to the declaration of the road in question as a State Highway, is now placed before this Court.

9. The important aspect which draws the attention of this Court is the non-furnishing of a copy of the Tamil Nadu Government Gazette Notification dated 22.10.2003 in Part II-Section 2, before the Writ Court. It is absolutely the failure on the part of the appellant, i.e. the Company, who is the Writ Petitioner in all the Writ Petitions before the Writ Court, to produce the said Gazette Notification for consideration at the relevant point of time, which led the learned Single Judge to arrive at a conclusion that the Road in question was not declared as Highway. The Writ Petitioner could have easily produced the said Gazette Notification before the Writ Court, as it is a published document. Therefore, in order to meet the ends of justice, the issue in question has to be looked into based on the facts and circumstances of the case and the material information now produced before this Court.

10. In view of the above, we find no error apparent on the part of the Writ Court in arriving at such a conclusion mainly because of the absence of required material information. Now, as the notification vide Tamil Nadu Government Gazette Notification dated 22.10.2003 in Part II-Section 2 is very much available before this Court, we remit the matter to the Writ Court to arrive at a decision based on the said material information placed before this Court and give due consideration to the factual and legal aspects of the matter and dispose of the Writ Petitions afresh after giving an opportunity of hearing to all the parties concerned. It is needless to mention that it is always open to the parties to contest on all the points raised before this Court.

11. At this stage, learned Senior Counsel appearing for the respondent/1st respondent in all the appeals made a plea that the respondent/1st respondent i.e. M/s.CeeDeeYes Standard Tower Private

Limited, may be given protection till a decision is arrived at by the Writ Court.

12. Taking note of the said submission, this Court orders status quo to be maintained by the parties till the Writ Petitions are decided by the Writ Court.

13. In the given circumstances, considering the urgency expressed by the learned Additional Advocate General, we request the learned Single Judge to take up the Writ petitions on top priority and dispose of the same in accordance with law.

14. At this juncture, learned counsel for the parties brought to our notice the clarificatory order dated 03.04.2013 in W.P.M.P.No.100 of 2013 in W.P.No.39261 of 2003 by the learned Single Judge, wherein, it was made clear that the benefit of the order directing the CMDA to grant the benefits of TDR to the respondent/1st respondent herein shall be confined to the present case alone and cannot be made as a precedent as the TDR benefits are given in lieu of huge compensation payable to the respondent/1st respondent herein based on today's market value. Therefore, learned counsel for the CMDA pleaded that the said clarificatory order may be taken note of by the learned Single Judge while disposing of the Writ Petitions afresh, as the benefit of TDR was given only to the respondent/1st respondent and the same cannot be cited in other cases as a routine exercise.

15. In view of the submission made by the learned counsel appearing for the CMDA, this Court is of the view that the learned Writ Court may take note of the said clarificatory order dated 03.04.2013 in W.P.M.P.No.100 of 2013 in W.P.No.39261 of 2003, while disposing of the Writ Petitions on merits.

These Writ Appeals are disposed of with the above direction and observation. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
सत्यमेव जयते

Assistant Registrar

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Sub Assistant Registrar

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To:

1. The Collector of Chennai,
First Line Beach Road,
Chennai 600 001.
2. The Special Tahsildar (LA),
Highways, Mambalam-Guindy Taluk,
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Ashok Nagar, Chennai 600 078.
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5. The Executive Engineer (PWD),
Lower Palar Basin Division,
Kancheepuram.
6. The Divisional Engineer (Highways),
Project-I, Alandur, Chennai 600 016.
7. The Commissioner(),
Alandur, Chennai-16

+lcc to M/s.N.PremKumar, Advocate, S.R.No.4482
+lcc to Mr.K.Raja Srinivas, Advocate, S.R.No.4382
+lcc to the Government Pleader, S.R.No.4411

W.A.Nos.162,163, 164 & 794 of 2014

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