

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2015

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.15484 of 2015

and

M.P.Nos.1 and 2 of 2015

1. S.Balamurugan
S/o.K.Sellappa Gounder
2. S.Muthukumarasamy
S/o.K.Sellappa Gounder

... Petitioners

-Vs-

1. The State of Tamil Nadu
Rep by its Secretary
Highways Department,
Fort St. George,
Chennai.
2. The District Collector,
Erode District.
3. The District Revenue Officer cum
Land Acquisition Officer,
Erode District.
4. The Divisional Engineer,
Highways,
NABARD and Village Roads,
Erode & District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to the proceedings in Na.Ka.No.14524/2013/B1 dated 05.11.2014 issued by the 3rd respondent under Sec. 15(2) of the Tamil Nadu Highways Act 2001 published in Dina thanthi on 07.11.2014 in Erode Edition and the subsequent order passed by the 4th respondent vide his office proceedings No.Na.Ka.No.13/2015-48/E.Va.A-2/ dated 19.01.2015 and quash the same as far as petitioners land in

R.S.No.Survey No.331/2,3,4 & 5 and 335/2, 10 & 11 measuring an extent 1.05 acres of agriculture land of 42.8 sq.meters in Elavamalai Village, Erode Taluk is concerned.

For Petitioners : Mr.I.C.Vasudevan

For Respondents : Mr.V.Subbiah,
Special Government Pleader

O R D E R

By consent, the Writ Petition itself is taken up for final disposal.

2. The petitioners claim that they are the owners of the land in R.S.Nos.331/2, 3, 4 and 5 (Old S.F.No.269 A & 357/1) admeasuring to an extent of 2.59 acres and also the land in R.S.Nos.335/2, 10 and 11 (Old S.F.No.269 A & 357/1) admeasuring to an extent of 0.38 acres, in all aggregating to the extent of 2.97 acres in Elavamalai Village, Erode Taluk, Erode District and they would further stat that the 1st respondent issued a gazette Notification vide G.O.No.8, Highways and Small Harbor (H.S.2) Department, dated 20.01.2012 under Section 15(1) of the Tamil Nadu Highways Act 2001 to acquire the land for the purpose of formation of outer ring road. The grievance expressed by the petitioner is that the 3rd respondent called for objections under Section 15(2) of the above said Act, vide notice dated 05.11.2014 and in response to the same, the petitioners have submitted their objections stating many other things that agricultural operations are being carried out in the lands in question and therefore, requested them not to acquire the land for forming outer ring road. Subsequently, on receipt of the objections, the 4th respondent has passed the impugned order dated 19.01.2015 stating that the acquisition is made only for the public interest and public welfare. Therefore, the lands owned by the petitioners cannot be left out and challenging the illegality of the said proceedings, the present writ petition is filed.

3. Mr.I.C.Vasudevan, learned counsel appearing for the petitioner has drawn the attention of this Court to Section 15 of the Tamil Nadu Highways Act 2001 and Rule 5 of the Tamil Nadu Highways rules. As per Section 15 of the above said Act, the Government has to pass the order after considering the objections and it has authorized Collectors of the District concerned to exercise the powers vested in them under Section 15 (2) of the said Act and Rule 5 also mandates before publishing a notice under Section 15(1), the Government or the

Collector or the Special Deputy Collector (Land Acquisition) as the case may be shall in addition to calling upon the owner and any other person having interest in the land to show cause as to why the land should not be acquired. Though such a notice was issued by the 3rd respondent and to him objections were also submitted, the impugned proceedings came to be passed by the 4th respondent and hence, the said impugned order has to be quashed. It is the further submission of the learned counsel for the petitioners that the authorities had changed the original plan only to safeguard the interest of some influential persons of the locality and hence, prays for quashment of the said order.

4. This Court heard the submissions of Mr.V.Subbiah, learned Special Government Pleader appearing for the respondents. He would submit that the authority has strenuously comply with the provisions of the Tamil Nadu Highways Act and prays for dismissal of this petition.

5. This Court, after considering the rival submissions and on perusal of the materials placed on record, is of the view that the impugned order is liable to be quashed and the matter is remanded to the third respondent for fresh consideration.

6. Section 15(1), speaks about the power acquires the land and the Government having power to take such an action and it has authorized the District Collectors to exercise the powers of the Government vested in them.

7. Section 2(5) defines Collector and it means the Collector of a District and includes any officer specifically appointed by the Government to perform the functions of the collector under this Act.

8. Let us take it, the Government has authorised the third respondent to exercise the power under Section 15 of the Tamil Nadu Highways Act and admittedly he has issued a notice, calling for objections and the petitioners had also submitted their objections to the third respondent. However, instead of the 3rd respondent passing the order taking into consideration the objections raised by the petitioner, the 4th respondent has passed the impugned order and hence, on the sole ground, the impugned order warrants interference.

9. In the result, this Writ Petition is partly allowed and the impugned order dated 19.01.2015 on the file of the 4th respondent is set aside and the matter is once again remanded to the 3rd respondent for fresh adjudication and it is open to the petitioners, to put forth their objections and the 3rd respondent is directed to consider

the same and pass orders in accordance with law as expeditiously as possible. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vsm

To

1. The Secretary,
Government of Tamil Nadu,
Highways Department,
Fort St. George,
Chennai.
2. The District Collector,
Erode District.
3. The District Revenue Officer cum
Land Acquisition Officer,
Erode District.
4. The Divisional Engineer,
Highways,
NABARD and Village Roads,
Erode & District.

+1cc to Mr.I.C.Vasudevan, Advocate, S.R.No.26445
+1cc to the Government Pleader, S.R.No.26516

सत्यमेव जयते

W.P.No.15484 of 2015

SR(CO)
CA(18/06/2015)

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