

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2015

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

W.P.No.20881 of 2015

and

M.P.No.1 and 2 of 2015

Veeyel Enterprises
No.13/3, Trunk Road,
Nazarethpet,
Poonamallee, Chennai-600 123.
Rep. by its Managing Partner
Mr.SP.Lakshmanan

.... Petitioner

Vs.

- 1.State of Tamil Nadu
rep. by its Secretary to Government,
Highways & Minor Ports (NH2) Department,
Fort St. George, Chennai-600 009.
- 2.The District Collector,
Thiruvallur District,
Thiruvallur.
- 3.The District Revenue Officer/
Land Acquisition Officer,
CMDA, Koyambedu,
Chennai- 600 092.
- 4.The Tahsildar (Land Acquisition)
Chennai Outer Ring Road Project,
Tamil Nadu Road Development Company,
Chennai Outer Ring Road,
Koyambedu, Chennai - 600 092.
- 5.Tamil Nadu Road Development Company Ltd.,
Rep. by its Managing Director,
No.171, 2nd Floor,
Tamil Nadu Maritime Board Building,
South Kesava Perumalpuram,
Pasumpon Muthuramalingam Road,
Raja Annamalaipuram, Chennai-600 028.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of

Highways Act, 2001, calling upon the petitioner to handover the possession. According to him, the said notice is not valid, as no fresh notice was issued after the dismissal of the writ petitions. Secondly, the notice was issued by the incompetent officer, namely, the Special Tahsildar, Chennai Outer Ring Road, Poonamallee at Nazarethpettai. He would rely upon G.O.Ms.No.199, Highways and Minor Ports (HN-2), Department dated 04.12.2012 and contend that only RDO is the authorised person to perform the function of the Land Acquisition Officer/District Collector under the Tamil Nadu Highways Act, 2001 and therefore the notice issued on 06.02.2014 under Section 16(2) of the Tamil Nadu Highways Act, 2001 is not sustainable. He would further submit that even in the said notice dated 06.02.2014, the said G.O.Ms.No.199, Highways and Minor Ports (HN-2), Department dated 04.12.2012, alone has been referred and in that event they should have followed the said G.O. Therefore, as per the said letter dated 06.02.2014, the respondents cannot take possession.

3. On the other hand, Mr.V.Jayaprakash Narayanan, the learned Special Government Pleader, appearing for respondents 1 to 4 and Mr.M.Sivavarthanan, the learned counsel appearing for 5th respondent would submit that already proceedings under Section 15(1) of the Tamil Nadu Highways Act, have been concluded and only possession has to be taken. Hence, as per the G.O.Ms.No.43, Highways(HF1) Department dated 23.02.2005, the Special Tahsildar has been authorised to take possession under Section 16(2) of the Tamil Nadu Highways Act, 2001. Therefore, the notice dated 06.02.2014 has been rightly issued. The learned Special Government Pleader also produced the sketch showing the location of the petitioner's property, which was acquired for the purpose of constructing interchange to connect the outer ring road to NH-4. Almost the entire road work has been completed and only interchange could not be completed because of non-possession of petitioner's property. Due to non-completion of the intersection, the NH-4 cannot be connected to Chennai Outer Ring Road and the vehicles cannot enter into Chennai Outer Ring Road and they are constrained to use the outer ring road, which causes traffic congestion and other unnecessary problems in the city.

4. Heard both sides and perused the materials available on record.

5. It is the admitted fact that the petitioner's land was acquired and the petitioner challenged the acquisition proceedings in Writ Petitions in W.P.Nos.8171 and 8527 of 2014. The writ petitions were dismissed by the learned Single Judge of this Court on 23.09.2014, against which, appeals have been filed in W.A.Nos.1462 and 1463 of 2014 before this Court on 06.11.2014. The writ appeals were dismissed by the Division Bench of this Court on 22.06.2015. The Hon'ble Supreme Court also dismissed the stay petition in the pending SLP.

6. A perusal of Section 16(2) of the Tamil Nadu Highways Act, 2001 would show that the Government may, by order, direct any person who may be in possession of the land to surrender or deliver possession thereof to the Collector or any person duly authorised by him in this behalf within thirty days of the service of the order. Only exercising power under Section 16(2) of the Tamil Nadu Highways Act, 2001, the notice dated 06.02.2014 has been issued by the Special Tahsildar. Though, originally it is contended by the learned Senior Counsel appearing for the petitioner that no such notice was issued, service of notice is proved by the respondents by producing the acknowledgement. Thereafter only the very notice is being challenged. It is very clear that as per the said G.O.Ms.No.43, Highways (HF1) Department dated 23.02.2005, various works have been delegated to various authorities. The same are as follows:-

THE TABLE

Sl. No. (1)	Officer (2)	Provisions of the Act (3)
1	Special Tahsildar (Land Acquisition) and if there is no Special Tahsildar (Land Acquisition) Tahsildar.	Sub Section (2) of Section 16
2	Collector of the District concerned	Sub-Section (1) and (2) of Section 19
3	Special Commissioner and Commissioner of Land Acquisition	Sub-Section (3) of Section 19
4	Special Tahsildar (Land Acquisition) and if there is no Special Tahsildar (Land Acquisition) Tahsildar.	Sub-Sections (1), (2) and (3) of Section 22.

From the above serial 1 of the table, it is very clear that to perform the functions under Section 16(2) of the Tamil Nadu Highways Act, 2001, the Special Tahsildar, Land Acquisition has been delegated and therefore the notice dated 06.02.2014 is in consonance with G.O.Ms.No.43, Highways (HF1) Department dated 23.02.2005. Therefore, the said notice is valid.

7. As far as the contention that G.O.Ms.No.199, Highways and Minor Ports (HN-2), Department dated 04.12.2012 is oldest one and it holds filed, the same is liable to be rejected for the simple reason that specifically for performing the function under Section 16(2) of the Tamil Nadu Highways Act, 2001, a specific G.O. has been passed, namely, G.O.Ms.No.43, Highways (HF1) Department dated 23.02.2005, whereas the G.O.Ms.No.199, Highways and Minor Ports (HN-2),

Department dated 04.12.2012 is general in nature by which the functions of the Government are to be carried out by the District Revenue Officer and it does not refer specifically about the action under Section 16(2) of the Tamil Nadu Highways Act, 2001. When there is a specific G.O. that alone holds the field and not general G.O.Ms.No.199, dated 04.12.2012. The notice dated 06.02.2014, though refers the G.O.Ms.No.199, Highways and Minor Ports (HN-2), Department dated 04.12.2012, mere reference of wrong G.O. is not a fatal one. That apart, when the Special Tahsildar is delegated with the powers to perform under Section 16(2) of the Tamil Nadu Highways Act, 2001, by specific G.O., which is the relevant one and therefore the action contemplated as per notice dated 06.02.2014 cannot be found fault with.

8. Moreover, when the petitioner lost the case before the learned Single Judge of this Court as well as the learned Division Bench of this Court and the stay petition was also dismissed by the Hon'ble Supreme Court in pending SLP, the petitioner cannot prevent the authorities from taking possession lawfully by issuing notice under the Tamil Nadu Highways Act by proper officer. Therefore, the writ of mandamus cannot be entertained, preventing competent authority from performing lawful action and therefore the writ petition is dismissed. No costs. Consequently, connected M.Ps. are closed. Except the petitioner's property, the other properties which are meant for the intersections have already been taken possession by the authorities. Therefore, the petitioner is necessarily to handover the possession to the respondent. The petitioner is granted four weeks time provided petitioner files an undertaking affidavit within one week from the date of receipt of a copy of this order undertaking to surrender the possession within a period of four weeks from the date of receipt of a copy of this order, failing which, it is open to the respondent to take possession after expiry of one week from the date of receipt of a copy of the order and failure to file undertaking affidavit by the petitioner by then.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1. The Secretary to Government,
Highways & Minor Ports (HN2) Department,
Fort St. George, Chennai-600 009.

2.The District Collector,
Thiruvallur District,Thiruvallur.

3.The District Revenue Officer/
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4.The Tahsildar (Land Acquisition)
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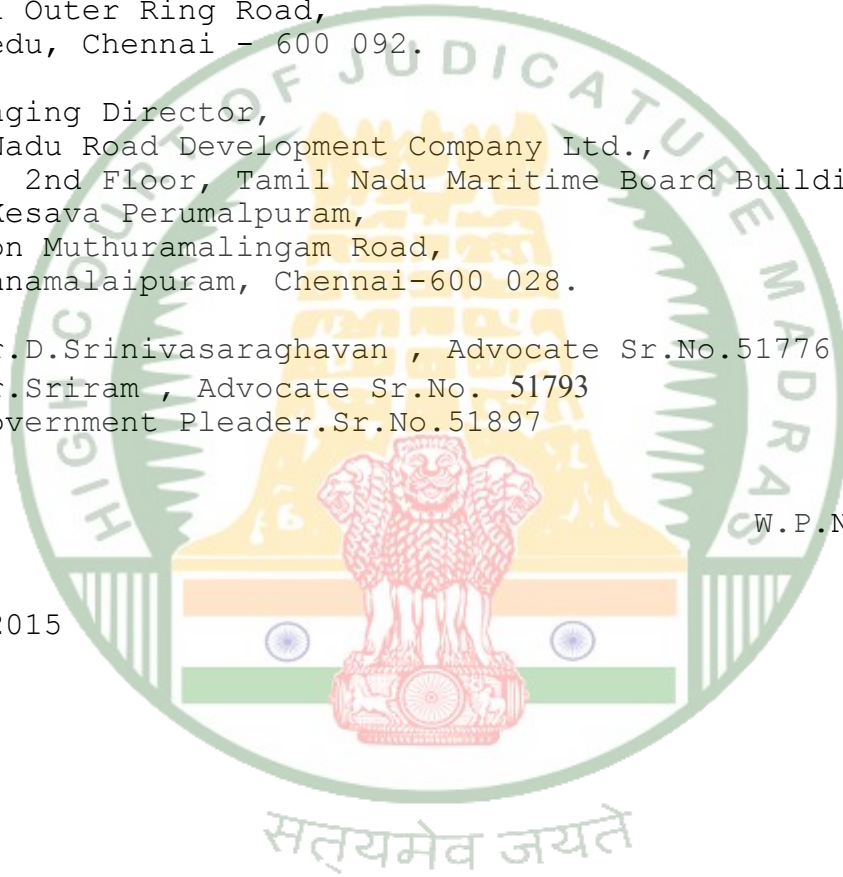
1 cc to Mr.D.Srinivasaraghavan , Advocate Sr.No.51776

1 cc to Mr.Sriram , Advocate Sr.No. 51793

1 cc to Government Pleader.Sr.No.51897

W.P.No.20881 of 2015

pur(co)
pmk.5.10.2015



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