

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2015

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.15846 of 2012

Dr.M.Kumaresan

.. Petitioner

vs.

1. The Union of India
rep by the Secretary to Government
Ministry of Road Transport and Highways
New Delhi
2. The Authorised Officer and the
Special District Revenue Officer (LA-NH 68)
Salem District
Salem
3. Project Director
National Highways Authority of India
V.S.A. Complex
Near Bus Stand
Salem

.. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent through the publication in Sub Section 3 of Section 3 in Part II of the Gazette of India in its issue No.583, S.O.No.667(E) on 29.3.2012, and the second respondent in notification Na.Ka.834/2009 dated 16.5.2012 published in daily thanthi dated 17.5.2012 without following the due process of law as void ab initio and quash the same.

For petitioner : Mr.S.Thankasivan

For respondents : Mr.R.Ravichandran AGP for R1 and R2
Mr.Richardson Wilson for R3
for M/s.Wilson Associates

O R D E R

Heard the learned counsels appearing for the parties concerned.

2. The petitioner has stated that he is a practicing surgeon and that he is having his nursing home, at Salem. All his family members are doctors and they are rendering service to the society, in the medical field. The petitioner had intended to develop his nursing home to serve the people in the locality. While so, the respondents had acquired parts of the lands belonging to him, in piecemeal, defeating his intention to develop the nursing home. The respondents had acquired a total extent of 80,898 square feet of the lands belonging to the petitioner, by way of three notifications. The lands in question were predominantly agricultural lands and they had been acquired for forming a road. The act of the respondents is patently irregular, as it is against the relevant provisions of law.

3. The learned counsel appearing for the petitioner had submitted that the action of the respondents in issuing the impugned notification, under Section 3-G of the National Highways Act, 1956 (hereinafter referred to as 'the Act'). is illegal and therefore, it is liable to be quashed. The impugned proceedings had been issued by the respondents without following the mandatory provisions of the Act, as it seeks to defeat the basic rights of the land owner to raise his objections, under Section 3-C(1) of the Act.

4. It has also been stated that the impugned proceedings had been issued, by the respondents, contrary to the statutory rights conferred on the petitioner, under Sections 3-A(3) and 3-C(1) and 3-C(2) of the Act. A major portion of the lands belonging to the petitioner, in two villages, had been acquired causing serious loss and hardship to the petitioner and to the members of his family. The respondents had failed to follow the mandatory procedures prescribed, under Section 3-A of the Act.

5. It has been further stated that the land belonging to the petitioner had been acquired without giving an opportunity of hearing to the petitioner, as required under sub Section 2 of Section 3-C of the Act. As the lands belonging to the petitioner had been acquired without following the due process of law, it is violative of Article 300-A of the Constitution of India. Therefore, the impugned proceedings of the first respondent, dated 29.3.2012, and the second respondent, dated 17.5.2012, are liable to be set aside.

6. The learned counsel appearing for the petitioner had submitted that Section 3-A (2) of the Act states that every notification under sub-Section (1) shall give a brief description of the land sought to be acquired. No such description of the land sought to be acquired had been given in the impugned notification, even though various portions of the large extent of the lands belonging to the petitioner had been acquired. He had also submitted that the acquisition of the various portions of the lands belonging to the petitioner had taken place, based on the same notification, contrary to the relevant provisions of law. Therefore, the impugned proceedings issued by the first and the second respondents are bad in law. The learned counsel appearing for the petitioner had relied on the decision of the Supreme Court, in *COMPETENT AUTHORITY Vs. BARANGORE JUTE FACTORY* (2005) 13 SCC 477, in support of his contentions.

7. Per contra, the learned counsels appearing for the respondents had submitted that Section 3-A(2) of the Act requires only a brief description of the land sought to be acquired. After a notification is issued, under Section 3-A of the Act, the procedures prescribed under Section 3-B of the Act are followed. Thereafter, an opportunity of hearing is granted to the owner of the land concerned, under Section 3-C of the Act. In fact, the petitioner had been asked to appear for an enquiry, on 31.5.2012. However, the petitioner had failed to appear for the personal hearing. Therefore, an enquiry had been conducted in the absence of the petitioner. Pursuant to the procedures followed by the respondents, under Sections 3-A, 3-B and 3-C of the Act, a declaration regarding the acquisition had been issued, under Section 3-D of the Act.

8. It has also been submitted that the interim order passed by this Court is only in respect of the dispossession of the property in question. In fact, the notification under Section 3-G of the Act had been issued even before the passing of the interim order, by this Court. As such, the writ petition filed by the petitioner is liable to be dismissed, as it is devoid of merits. With regard to the issuance of the notification under Section 3-A of the Act, the learned counsel appearing for the third respondent had relied on the decisions reported in *GENERAL MANAGER (TECHNICAL) AND PROJECT DIRECTOR, NATIONAL HIGHWAYS AUTHORITY OF INDIA, CHENNAI Vs. MS.SRIDEVI REP. BY HER POWER OF ATTORNEY, SAIBABU AND OTHERS* (2007) 1 MLJ 129 and *V.NANDAKUMAR Vs. U.O.I.* (2010) 1 MLJ 901 to state that only a brief description of the lands sought to be acquired is required to be given in the notification, under Section 3-A(2) of the Act.

9. In view of the submissions made by the learned counsels appearing on behalf of the parties concerned and on a perusal of the records available and in view of the decisions cited supra, this Court is of the considered view that the petitioner has not shown sufficient cause or reason to grant the reliefs, as prayed for by the petitioner, in the present writ petition.

10. As seen from the records available, it is noted that the petitioner had approached this Court, belatedly, only after the completion of a substantial part of the proceedings initiated by the respondents to acquire the land belonging to the petitioner. Further, the petitioner had failed to participate in the enquiry conducted, under Section 3-C of the Act. Thereafter, a declaration had also been made, under Section 3-D of the Act.

11. The petitioner has not been in a position to show that the procedures prescribed under Section 3-A(2) of the Act had not been followed. Section 3A(2) of the Act requires the authorities concerned to give only a brief description of the property sought to be acquired. The owner of the land is furnished with further details and he is given an opportunity of hearing, under Section 3-C of the Act, to raise his objections. As the petitioner has failed to raise his objections on the date fixed for the hearing, he has lost his right to challenge the land acquisition proceedings. Therefore, the contentions raised on behalf of the petitioner cannot be countenanced. In such circumstances, this Court is constrained to hold that the present writ petition, filed by the petitioner, is devoid of merits. Hence, the writ petition stands dismissed. Connected M.P.Nos.1, 2 and 3 of 2012 are closed. No costs.

sd/

ASSISTANT REGISTRAR(J)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

lan

To:

1. The Secretary to Government
The Union of India
Ministry of Road Transport and Highways
New Delhi

WEB COPY

2. The Authorised Officer and the
Special District Revenue Officer (LA-NH 68)
Salem District
Salem

3. Project Director
National Highways Authority of India
V.S.A. Complex
Near Bus Stand
Salem

+1 CC to MR. S.Thankasiyan Advocate. SR.NO. 57473
+1 CC to MR. P. Wilson Associates Advocate. SR.NO. 56911

Writ Petition No.15846 of 2012

CO-TM
JD 20/11/2015



WEB COPY