

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.02.2013

Coram:-

The Hon'ble Mr. Justice T.Raja

Writ Petition Nos.39261/03, 4341/04 & 26794/04
& WPMP Nos.47516/03, 24630/05, 22631/05, 5109/04
& 408/10 and WVMP Nos.902/05 & 897/05

M/s.CeeDeeYes Standard

Towers (P) Ltd.,
rep. by its Managing Director,
No.42, Second Main Road,
Gandhi Nagar, Adyar,
Chennai 600 020.

... Petitioner in all
Writ Petitions.

vs.

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

... R1 in all WPs.

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

... R2 in all WPs.

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

... R3 in WPs.39261/03

The Commissioner (ULC),
Alandur, Chennai-16.

... R3 in WP.26794/04

The State of Tamilnadu
rep. by its Secretary,
Public Works Department,
Fort St. George,
Chennai 600 009.

... R4 in WP.39261/03

The Executive Engineer (PWD),
Kancheepuram.

... R4 in WP.26794/04

The Chief Engineer (WRO),
Chennai Region,
Kamarajar Salai,
Chennai 600 005.

... R5 in WP.39261/03

The Secretary,
Highways Department,
Government of Tamil Nadu,
Fort St. George,
Chennai 600 009.

... R5 in WP.26794/04

The Executive Engineer (PWD),
Lower Palar Basin Division,
Kancheepuram.

... R6 in WP.39261/03.

The Divisional Engineer,
Highways, Project-I,
Alandur, Chennai 600 016.

... R7 in WP.39261/03.

WP No.39261/2003: Filed 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: Filed 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: Filed 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.

For Petitioners in
all W.Ps. : Mr.R.Thiagarajan,
Senior Counsel for Mr.P.Rathinadurai

For R1, R2 & R4 to R7 in
WP.39261/03 and for

Respondents in WP.4341
& 26794/04 : Mr.K.Rajendra Prasad,
Govt. Advocate

For R3 in WP.39261/03 : Mr.K.Rajasrinivas

Common Order

M/s.CeeDeeYes Standard Towers (P) Limited, Adyar, Chennai, rep. by the Managing Director, questioning the validity of the Notice, dated 20.10.2003 issued by the first respondent/District Collector, Chennai, requiring the petitioner to show cause within thirty days from the date of giving public notice as to why the lands in S.No.329 of Velachery Village should not be acquired, has filed W.P. No.39216 of 2003, seeking for issuance of a writ of certiorari to call for the records relating to the said notice in Form A issued under Section 15 (2) of the Tamil Nadu Highways Act, 2001, (in short 'the Act'), quash the same and grant further relief.

In W.P. No.4341 of 2004 filed by the very same petitioner, the prayer is for 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, whereby, the petitioner was informed that having been allowed by the Special Tahsildar, Land Acquisition, Mambalam-Guindy Taluk, to peruse the records, the petitioner's request for supply of further materials was not reasonable and hence, the same could not be complied with.

The other writ petition filed by the petitioner in W.P. No.26794 of 2004 is for issuance of a writ of certiorari to call for the records relating to the notice, dated 22.07.2004, in Form A in Ref No.MG/LA1/2002, issued by the District Collector, Chennai, under Section 15(2) of the Tamilnadu Highways Act, 2001 to show cause within 30 days from the date of giving public notice as to why the lands of the petitioner in S.No.329 should not be acquired.

2. All the three writ petitions filed by the very same petitioner, being interconnected, are heard together and decided by this Common Order.

3. Learned Senior Counsel appearing for the petitioner, at the first instance, by touching upon the factual aspects involved, would submit that the petitioner, in respect of the land covered in S.No.329 of Velachery Village, Chennai District, was issued with the impugned notices under Section 15(2) of the Act, dated 20.10.2003 and 22.07.2004, calling upon him to show cause as to why the land in question should not be acquired for widening of the 6 lane / formation of inner ring road. After receiving the first notice, even though on 12.11.2003, preliminary objections were sent by the petitioner stating inter alia that the said Notice is vague, per se defective, bereft of

material particulars, without jurisdiction etc. and called upon the first respondent to furnish him with the copies of the proposal issued by the Public Works Department (PWD) and the Chennai Metropolitan Development Authority (CMDA), no relevant details such as width and length of the land required for acquisition were furnished. After receipt of the preliminary objections, by communication dated 21.11.2003, the first respondent permitted the petitioner to peruse the required particulars from the office of the 2nd respondent, who permitted the petitioner to peruse the combined sketch and the land plan schedule prepared by the Divisional Engineer, Highways, Project I on 22.08.2003. During inspection, the petitioner's counsel perused a letter dated 14.05.2003 in Letter No.210/98/LA/JDO addressed by the Divisional Engineer (Highways) Project I, Chennai-16, to the 2nd respondent, directing the exclusion of the land situated opposite to that of the petitioner's land comprised in S. Nos.345, 346, etc., from acquisition. However, the 2nd respondent conveniently removed such letter from the File and denied perusal of such relevant particulars. Therefore, the petitioner sent a representation on 27.11.2003 and thereafter, filed W.P. No.37419 of 2003 for a direction to furnish copies of the documents. This Court also permitted the petitioner's counsel to peruse the file with a further direction to furnish copies of the documents mentioned therein which also came to be furnished on 17.02.2004. It is further submitted that by G.O. Ms. No.321 (Housing and Urban Development Department), dated 12.08.1988, linking of Velachery Tank and Pallikaranai Marsh which is known as "velachery - Pallikarani Drainage Course" was ordered and the Government, by way of G.O. Ms. No.1 (Housing and Urban Development (UD III (2) Department), dated 09.01.2003, sanctioned huge money for the said project. In the meanwhile, the Executive Engineer (PWD), Lower Palar Basin Division, prepared a Plan showing the details of the land for Velachery - Pallikaranai drainage course in Velachery Village wherein it was specifically mentioned that the portion of land in S. Nos.344, 345 and 346 of Velachery Village are to be acquired for the said drainage course. The PWD also constructed about 13 culverts for the drainage channel and two such culverts are constructed in S. No.345 and 362, however, on account of encroachments and illegal constructions, those constructed culverts could not be connected. In view of non-connectivity, the entire West Velachery area was heavily flooded during rains and hence, temporary trenches were made on the western side of the existing Velachery-Tambaram Road to drain the rain water.

Learned Senior Counsel further submitted that when the respondents required the land in question for widening the Road, as per Section 8 of the Tamil Nadu Highways Act, the Highways Authority has to fix the highway boundary, building line or control line, by issuing a Notification relating to any area in the Division concerned where the construction or development of a highway is undertaken or proposed to be undertaken. According to him, Section 8 of the Act further provides that before publication of the notification under the sub-Section, a draft of the said Notification shall be published

inviting objections, if any, on the proposed fixation. Again, it is provided under Section 8(2) that the Draft of the Notification shall contain all the details of the land and also notice requiring all persons likely to be affected by such notification, to make their objections or suggestions, if any, in writing with respect to the issue of such a notification to the Highways Authority within such period as may be prescribed. Only after considering the said representation, the Highways Authority may publish the final notification under sub-section (1) with any modification as may be considered necessary. He pointed out that rule 3 of the Tamil Nadu Highways Rules, 2003, provides for giving 30 days time to make objections and suggestions by the persons affected by the Draft Notification under sub-section (1) of Section 8. When all such procedures are clearly outlined in Section 8, without following the said provision, straight issuance of notice under Section 15 (2) vitiates the entire proceedings.

It was further contended that when the Government already acquired the lands in S. Nos.344, 345 and 346 of Velachery Village situated opposite to the land of the petitioners in S. No.329, without even utilizing those lands for alignment of the road, the respondents arbitrarily decided to acquire the petitioner's land which conduct is nothing but a mala fide exercise of power.

Learned Senior Counsel added that the Highways Department actually required only 124 ft. for the purpose of 6 lane road and, already having 64 ft. road, they needed 60 ft. alone. In other words, now, the Highways only need 30 ft. on the right side and 30 ft. on the left side. It is apparent that the respondents, in an attempt to favour the land owners in S. Nos.344, 345, 346 etc. whose lands have already been acquired, sought to acquire more extent of land only from the petitioner even without touching those already acquired lands, as a result, the lands acquired, for which compensation was paid to the land owners, would be left without any use and further, in view of the fact that till date, admittedly, the respondents have not awarded compensation to the petitioner being land owner, they may have to pass the Award only taking into account to-day's market value of the land which will run to Rs.50 lakhs; therefore, to avoid payment of such huge amount from the public exchequer, if this Court accepts the case of the petitioner that without complying the procedure under Section 8 of the Act issuance of the notice under Section 15 (2) of the Act will vitiate the entire proceedings, instead of quashing the proceedings as it would compel the respondents to do fresh exercise under Section-8 followed by Section-15(2) of the Act which will cause huge delay in widening the road, keeping in view that it is also a matter of great public importance viz., widening of the road, a direction may be given to the CMDA to grant the Transfer of Development Rights (TDR) in lieu of the huge compensation and in such case, the petitioner is ready to withdraw the Writ Petitions paving the way for widening of the road without any further hiccup or delay. This good gesture is shown by

the petitioner with an intention that widening of the road which involves utmost public importance should be allowed to proceed and should not be stultified and further, by granting TDR benefit to the petitioner, the respondents may also save a huge amount of compensation payable by them for the land as the sum would work out to Rs.50 lakhs, approximately.

4. In reply, learned Government Advocate appearing for the respondents in all the WPs. except the CMDA/R-3 in WP.39261 of 2003 submitted that the Velachery Tank situated in 153 Division of Chennai Corporation is being maintained by the PWD with the ayacut of 962 acres of land which has now become residential colonies. Earlier, the Tank had 3 surplus weirs and 4 sluices. Since most of the ayacut came to be converted as residential colonies and there was no defined surplus course, the weirs and sluices were closed and subsequently, the full level of the Tank was lowered by 4 feet and a new weir was constructed during 1986 vide G.O. Ms. No.712, PWD, dt.21.03.1986. Thereafter, due to absence of a defined channel, the surplus water entered the residential colonies and got inundated. Ultimately, by order of this Court passed in W.P. No.22053 of 1993, an estimate for constructing a drain for a length of 2.136 km was approved. Subsequently, the Government issued G.O. Ms.No.321, Housing and Urban Development, dated 12.08.1998, for flood alleviation and improvement of storm water drainage system in Chennai Metropolitan Area based on the recommendations of M/s.Mott Mac Donald, an U.K. Based Consultancy firm. Also, a Committee was constituted to sort out the issues relating to the flooding problems in Velachery. Similarly, the Government decided to acquire the lands in question for the purpose of widening the Highways. For such purpose, the Government delegated the power to the District Collector/R1 who, by issuing show cause notice and public notice dated 16.10.2003 to all the registered owners and the persons interested over the lands comprised in S. No.237 etc., of Velachery Village of Mambalam-Guindy Taluk, Chennai District, called upon them to show cause within thirty days as to why their lands should not be acquired. A personal hearing was also given at 11 A.M. on 21.11.2003 and the same was also notified in the public notice. In response to the show cause notice, the petitioner sent an objection letter, dated 14.11.2003, and also made a request therein to furnish copies of the proposals submitted by various Government Agencies like PWD / CMDA / Highways Department / Water and Drainage Board and also sought for time to file objections. Thereafter, he was also informed by the 1st respondent that copies as requested by him could not be supplied and that he may peruse the records from the Office of the Special Tahsildar, Land Acquisition, Mambalam-Guindy Taluk, Chennai-78. The petitioner filed W.P. No.37419 of 2003 seeking a writ of mandamus for production of certain records. By Order dated 17.02.2004, on direction of the court, certain documents were produced for perusal of the Advocate of the petitioner and copies also given on the same day and subsequently, the Writ Petition was ordered as closed. Thereafter, the petitioner filed Miscellaneous Petition

No.47516 of 2003 in W.P. No.39262 of 2003 impleading the Collector of Chennai and 6 others as respondents and obtained an interim stay of dispossession. In view of the above events, the first respondent, after carefully considering the objections received, sent proposals to the Government on 14.01.2004 for publication of notice under Section 15 (1) by the Government in the Gazette. A Public Notice, dated 22.07.2004, under Section 15(2) of the Act was published, one in a English Newspaper 'Trinity Mirror, Edition dated 27.07.2004 and another in a vernacular Daily "Thinathanthi, Edition dated 28.07.2004. Also, fresh show cause notices were also served on the land owners/interested persons.

The learned Government Advocate also narrated as to under what circumstances, the respondents issued the notice under Section 15 (2) of the Act. Assertively, he stated before this Court that the first respondent is not required to satisfy with regard to the provisions under Section 8 of the Act. According to him, the procedure under Section 8 is not a pre-requisite for the proceedings under Section 15(2) of the Act. The relevant paragraph in this regard as found in the counter affidavit, dated 7.12.2004, filed by R1 is extracted here-under:-

" 16. The first respondent is not required to satisfy about the proceedings under Section 8 of the Act as contended by the petitioner. The proceedings under Section 8 is not a pre-requisite for the proceedings under Section 15(2) of the Tamil Nadu Highways Act 2001 of the first respondent."

Again, interestingly, the learned Government Advocate made a further submission that the petitioner/CeeDeeYes Towers Pvt. Ltd. is not the registered owner of the land at present and therefore, the petitioner was not served with a notice. The relevant portion in the counter affidavit is reproduced below:-

" 18. it is submitted that the notices are served on the registered holder as found in the revenue records. The Managing Director, Cee Dee Yes Towers Pvt. Ltd., is not registered holder at present and therefore the petitioner was not served with the notice. The notice has been served on the owner as per the revenue record and therefore it is valid. The 1st respondent is the authority to issue show cause notice under section 15 (2) and it has been issued in the name of the 1st respondent and therefore it is valid...."

5. First of all, it must be pointed out that the counter

affidavit filed by R1 is per se wrong for the simple reason that the impugned show cause notice, dated 20.10.2003, shows the interested person as M/s.Ceedeyes Standard Towers (P) Ltd., 42, Gandhi Nagar II Main Road, Adyar, Chennai-20, who is none else than the petitioner. When the notice under Section 15(2) of the Act was duly served upon the petitioner, the argument of the learned senior counsel for the petitioner that without following the pre-requisites as outlined in Section 8 of the Act, issuance of the notice under Section 15(2) of the Act vitiated the entire proceedings, needs to be answered.

6. In fact, a Division Bench of this Court, in R.Kumar v. 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 reflects the arbitrary exercise of power.

Though the difference between Section 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 Tahsildar (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, dt.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.39261/03 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 accept 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 note 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.

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

JI.

To

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 Chairman-cum-
Managing Director, CMDA, Chennai.

4. The Commissioner (ULC),
Alandur, Chennai-16.

5. The Secretary,
Public Works Department,
Fort St. George,
Chennai 600 009.

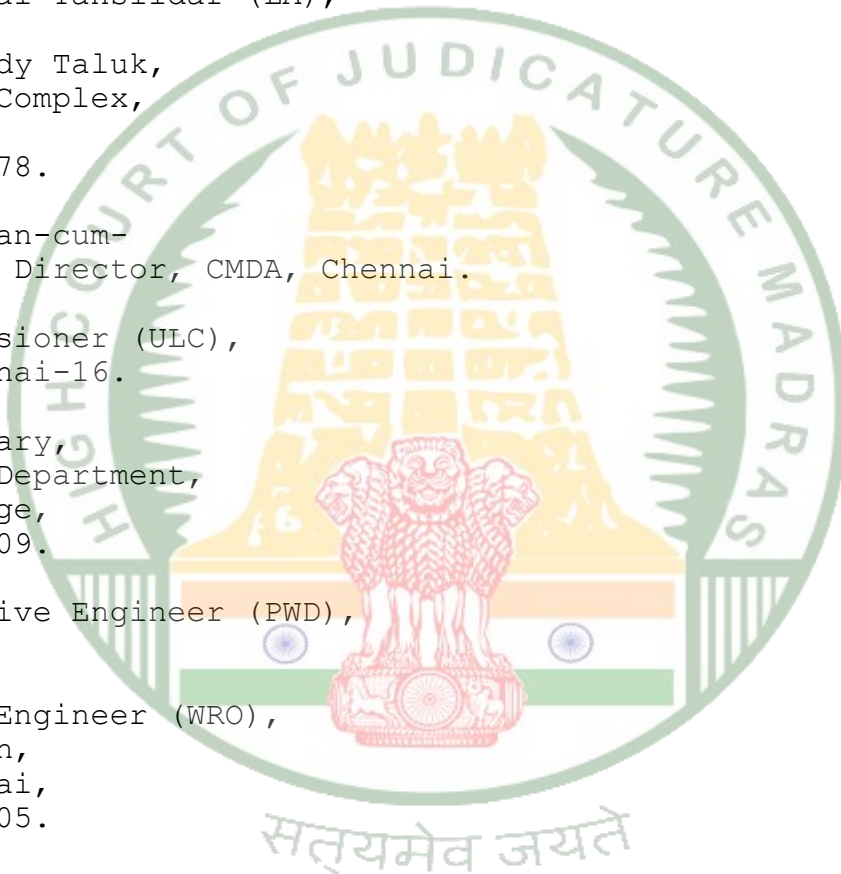
6. The Executive Engineer (PWD),
Kancheepuram.

7. The Chief Engineer (WRO),
Chennai Region,
Kamarajar Salai,
Chennai 600 005.

8. The Secretary,
Highways Department,
Government of Tamil Nadu,
Fort St. George,
Chennai 600 009.

9. The Executive Engineer (PWD),
Lower Palar Basin Division,
Kancheepuram.

10. The Divisional Engineer,
Highways, Project-I,
Alandur, Chennai 600 016.



WEB COPY

+1 C.C. The Government Pleader, High Court, Madras-104. SR NO 10818.

+1 C.C. Mr.K.Rajasrinivas, Advocate SR NO 10491

+1 C.C. Mr.P.Rathinadurai, Advocate SR Nos 10590 to 10592.

PD Common Order in WP
Nos.39261/03, 4341/04
and 26794 of 2004.

MSM (CO)
NG 25/02/2013



WEB COPY