

THE HON'BLE SRI JUSTICE RAJA ELANGO

Writ Petition Nos.4810 & 21350 of 2010

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COMMON ORDER :

These two writ petitions are heard together and being disposed of by this common order since the issue involved is one and the same and the parties are common.

The Writ Petition No.4810 of 2010 is filed seeking to quash the notification dated 30-11-2009 vide S.O. 3060 (E) and published in daily newspaper viz., 'The Hindu', dated 12-12-009, issued by the 1st respondent, as without jurisdiction, illegal and arbitrary by issuing a writ in the nature of writ of *certiorari*.

The Writ Petition No.21350 of 2010 is filed by the same petitioner seeking to quash the notification dated 13-05-2010 vide S.O. 1064 (E) and published in daily newspaper viz., 'Saakshi', dated 11-6-2010 issued by the 1st respondent, as without jurisdiction, illegal and arbitrary by issuing a writ in the nature of writ of *certiorari*.

The brief facts of the case are as follows :

By virtue of the notification dated 30-11-2009 under Section 3A(1) of the National Highways Act, 1956, an extent of 1478 square meters of land situated in Survey Nos.279/1 of Bodduvaripalem Village, Kodavalur Mandal,

SPSR Nellore District belonging to the petitioner, was sought to be acquired by the Government of India for the purpose of expansion of National Highway No.5 into six lines. Aggrieved over the same, the petitioner filed Writ Petition No.4810 of 2010 and this Court while admitting the writ petition on 26-04-2010 directed the respondents not to remove the rice mill for the purpose of executing the National Highway work in W.P.M.P. No.6187 of 2010 but permitted them to use the rest of the land for the National Highway work.

Pending the Writ Petition No.4810 of 2010, the Central Government issued another notification on 13-05-2010 vide S.O. 1064/E and published in daily newspaper viz., 'Saakshi' dated 11-06-2010 for acquisition of land in Sy.No.279/1 situated in Bodduvaripalem Village, Kodavalur Mandal, SPSR Nellore District with its subdivisions describing the same as Government poramboke. This notification is in contrast to previous notification dated 30-11-2009 whereunder the land in Survey No.279/1 was sought to be acquired showing the petitioner as its owner. Aggrieved over the same, the petitioner filed the Writ Petition No.21350 of 2010 and this Hon'ble Court by its order dated 27-08-2010 in W.P.M.P. No.27158 of 2010 in W.P. No.21350 of 2010 stayed the further proceedings pursuant to the order in NH-5 Special Registered No.12/2010, dated 15-07-2010 insofar as petitioner is concerned.

Sri M.V.S.Suresh Kumar, learned counsel for the petitioner in both the writ petitions, submits that the petitioner is the owner of Ac.1.50 cents in Sy.No.279/1 and its sub-divisions of Boddunaripalem Village, Kodavalur Mandal, SPSR Nellore District. He also submits that as per the report furnished on 23-03-2010 by the Tahsildar, Kodavalur Mandal to the 2nd respondent viz., the Revenue Divisional Officer, Kavali, the land in Sy.No.279/1 to an extent of Ac.5.48 cents originally recorded as Government topu, was subsequently converted as patta land in R.D.S. No.836, dated 28-06-1922 as per re-survey and resettlement register of Boddunaripalem Revenue Village and that the land in Sy.No.279/1A comprising of Ac.5.48 cents is recorded as patta land.

In the counter-affidavit filed in W.P. No.4810 of 2010, it is not disputed that the land in question belongs to the petitioner. Whereas, in the counter-affidavit filed in W.P. No.21350 of 2010, the respondents have taken a different stand that the land situated in Sy.No.279/1 is recorded as topu poramboke as per the revenue records and hence revised notification was issued.

Heard the learned counsel on either side and perused the material available on record.

It is evident from the record that after this Court passed the order dated 26-04-2010 in W.P.M.P. No.6187 of 2010 in W.P.No.4810 of 2010 staying the notification

dated 30-11-2009, issued by the 1st respondent, describing the petitioner as owner of the subject land, the second notification was issued by the 1st respondent, claiming the selfsame subject land as topu poramboke.

On an earlier occasion, during the course of hearing, Sri S.S.Varma, the learned standing counsel for NHAI, appearing for the 1st respondent, across the bar, submitted that the alignment design of the proposed road was changed and hence the subject land would not be affected and he also produced a memo issued by the Project Director, in which, it is observed as under:

“In this connection, NHAI has informed that the petitioner’s land was mentioned in the notification dt.30.11.2009 as patta land and after verifying the revenue records classification of S.No.279/1 is ascertained as Thopu Poramboke and clarified that the authorities have not been taken any action for removal of rice mill as in compliance of the Hon’ble High Court Interim order issued on 26.04.2010 vide writ petition no.4810/2010.

Further, NHAI is once again examining the feasibility of avoiding major acquisition of rice mill and the petitioner’s land, it will take at least 2 or 3 months for finalization of the same.”

But, after observing the said memo, when this Court directed to file an affidavit, the respondents have changed their stand and informed that there is no proposal for realignment of the design. But the learned counsel for the petitioner produced a copy of the realignment signed by the Project Director and as per the said realignment copy, the petitioner mill is not included in acquisition. To substantiate the same, the petitioner has also filed an affidavit. But the learned counsel for the respondents filed

a counter stating that there is no such meeting or realignment design. But the fact remains that drawings of realignment was produced before this Court.

Further the report sent by the Tahsildar vide R.C.B.No.191 of 2010, dated 23-03-2010 to the Revenue Divisional Officer, Kavali clearly shows that the full extent of Ac.5.48 cents in Sy.No.279/1, recorded as Government poramboke tope was subsequently altered and implemented as patta magani vide R.D.S. No.836, dated 28-06-1922 of the Taluq. The patta was implemented to the extent of Ac.5.00 cents in Sy.No.279/1A-1 and Ac.0.48 cents to the extent of Sy.No.279/1A-2. In spite of the said report of the Tahsildar, the respondents have issued the subsequent notification dated 13-05-2010 describing the subject land as Government land. It appears, to circumvent the interim direction granted by this Court in the earlier writ petition (W.P.No.4810 of 2010), the first respondent issued the second notification. It is to be noted that in view of the second notification issued by the first respondent, automatically, the first notification is presumed to be superseded. Hence, it is presumed that the first notification is set aside by the same respondent. So far as the second notification is concerned, it is totally contrary to the first notification. Hence, from the date of very notification till the date of last hearing, the respondents have not come to the court with clean hands and they have not applied their mind either prior to

issuance of notification or subsequent to the notification. Further the petitioner has also informed this Court that he is willing to part with the land except the mill and he has no grievance of the said land is taken by the authorities excluding the mill. The learned counsel for the respondents submitted that, if this Court is inclined to pass orders setting aside the impugned notifications, a direction may be given for issuance of a fresh notification. This Court is of the view that such a direction need not be given since it is always left open to the respondents concerned to take appropriate steps in accordance with law.

In view of the above discussion, this Court is of the considered view that the respondents have not come to the Court with clean hands. Hence, the impugned notifications dated 30.11.2009 and 13-05-2010 issued by the 1st respondent are hereby quashed insofar as the land of the petitioner is concerned.

Accordingly, both the Writ Petitions are allowed. There shall be no order as to costs in both the writ petitions. As a sequel, miscellaneous petitions pending, if any, in both the Writ Petitions are closed.

JUSTICE RAJA ELANGO

30th April, 2015.

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