

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 12/09/2015

DATED: 05/01/2016

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.11609 of 2014

and

M.P.No.1 of 2014

Mohanan

... Petitioner

Vs.

The Assistant Divisional

Engineer (Highways),

Construction and Maintenance Office,

Chengalpattu, Kancheepuram District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent nil issued under Section 27(2)(ii) of the Tamilnadu Highways Act 2001 dated 27.12.2013 and served on the petitioner on 09.01.2014 and quash the same as illegal and without jurisdiction, and consequentially forbear the respondents, their men, agents, servants and subordinates from interfering with the property of the petitioner situate in S.No.58/3B1A1, (presently 58/31) measuring 2 grounds 880 square feet of Mahabalipuram Village, Thirukalukundram Taluk, Kancheepuram District.

For Petitioner : Mr.V.Raghavachari

For Respondents: Mr.M.S.Ramesh

Additional Government Pleader

O R D E R

The short facts of the case are as follows:-

The petitioner has submitted that the property situated in S.No.58/3B1A1, (presently 58/31) measuring 2 grounds 880 square feet of Mahabalipuram Village, Thirukalukundram Taluk, Kancheepuram District was purchased by him under a registered sale deed dated 29.05.2006 from R.Sekar for a valuable consideration. Soon after the purchase of the property, he has also got mutation of the records and patta was issued in his name. He has also put up a construction and had let out the property to "Kumbakonam Degree Coffee" and Arun Ice cream parlour". His tenants are in peaceful occupation. All of a sudden the respondent herein had issued a notice reporting to be one under Section 27 of the

Tamilnadu Highways Act. The said notice is ludicrous and an insult to a member of a civilized society. He has extracted the notice issued to him and a bare perusal will indicate absolute non application of mind and total recalcitrance to the Constitutional rights of the citizen. The notice reads as hereunder:

"As already decided by the Government it was ordered that the Thiruvannamiyur - Mamallapuram - Marakkanam - Pondicherry (East Coast Road) - SH 49 is proposed for widening from two lane to four lane from Km 22/300 to Km 55/800 i.e., from Akkarai village to Pooncheri village since there was notification for land acquisition of your property, and the compensation for the same was settled / to be settled, the residents of all your buildings / compound walls / and other structures within the Row (right of way) is being treated as encroachments. Hence the encroachments within Row is now advised to vacate the building within 7 days (seven days) from the receipt of this notice. Otherwise the encroachments will be evicted as per the Tamil Nadu Highways Act 2001 section 27 and 28 and rules / Acts in force"

At no point of time, action was initiated for acquiring his lands. He was not served with any notice regarding the land acquisition. Till date he has not been issued with the notice of acquisition nor an enquiry conducted.

2. He is a native of this place and residing in this area right from birth. To his shock and surprise, he was served with the impugned notice calling upon him to vacate the premises alleging the land had been already acquired and "compensation was settled / to be settled". It is not known under what award the compensation was settled and to whom. He was astounded on receipt of the notice. Immediately, he rushed to the office of the Tahsildar, the respondent and the District Collector to find out the correctness of the statement made in the impugned notice. Except being ignored, he did not get any response from the "public servants". The truth remains that he has not been issued with any notice about the acquisition proceedings. The said notice issued under Section 28(2)(ii) of Tamil Nadu Highways Act, 2001 alleging his property had been notified for land acquisition is a blatant falsehood. Widening of highways was a recent idea of the Government of Tamilnadu. It warrants a procedure for acquisition which includes payment of compensation on par with the market rate. The respondent cannot issue a notice alleging encroachment of the property and threaten him with removal. Without any prior notice and enquiry, the respondent had classified his legal possession over his holdings as "encroachment" and are seeking to have him vacated from the premises and such a notice demeans the status of a citizen.

3. He has further submitted that the respondent has no authority to acquire his holdings contrary to the Land Acquisition Act. The Supreme Court as well observed in *Tukaram Kana Joshi v. MIDC*, (2013) 1 SCC 353, that the taking of possession or acquiring the property of a citizen most certainly tantamount to deprivation and such deprivation can take place only in accordance with the "law", as the said word has specifically been used in Article 300-A of the Constitution of India. Such deprivation can only be restored to through a procedure prescribed by a statute. The same cannot be done by way of executive fiat or order or administrative caprice. In *Jilubhai Nanbhai Khachar v. State of Gujarat*, Air 1995 SC 142 it has been held as follows:

"48. In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There [is] no deprivation without [due] sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation."

4. He has further submitted that Article 300A of the Constitution has guaranteed the right to property is a constitutional right. To the knowledge of the petitioner, there has been no acquisition in respect of his property. The respondent has no authority to deprive him of his property without adhering to procedure prescribed by law. When there is no acquisition as per law, the state has no authority over the petitioner's land. Therefore, the respondent have no authority to classify his holdings and the property acquired by him and his possession over his legal holdings as encroachment. The notice directing the petitioner to vacate his own private land and threatening of coercive action for dispossession in his absence is absolutely illegal and exceeding his jurisdiction. When there is no acquisition, the respondent has no right over the petitioner's land, therefore, the notice itself is unwarranted.

5. He has further submitted that immediately after the receipt of the impugned notice, he made a representation to the respondent clearly informing that there is no acquisition earlier in point of time to the knowledge of this petitioner and the property cannot be acquired without following the procedure laid down by law. He has further requested him to furnish him with the copy of the proceedings and particulars regarding notification and enquiry proceedings, however, the respondent had failed to furnish a reply. Along with the reply he has enclosed a sale deed, patta, chitta and circular dated 27.12.2013. The respondent did not hold any enquiry or bothered to respond. On contrary, they are initiating steps to dispossess him from land without following the procedure known to law. He rushed to the Taluk Office to find out the proceedings from the land acquisition

officer. They had informed him that they hold no records. Hence, he has no other remedy than to approach this Court under Article 226 of the Constitution of India. Hence, this writ petition is filed.

6. The respondent has filed a counter affidavit and he has submitted that the Government decided to "The Strengthening and Widening of the East Coast Road from Thiruvannamiyur to Cuddalore (S.A.Dist)" As part of it, an extent 5.60.0 hectares or 14.04 acres dry lands in Mamallapuram village, formerly Chengalpattu Taluk and now Thirukazhukundram Taluk, Kancheepuram District. The draft notification under Section 4(i) read with Section 17(3) of urgency clause of Land Acquisition Act (Central Act 1 of 1894) for an extent of 5.60.0 hectares equivalent to 14.04 acres of dry lands was approved in G.O.Ms.No.852 (Public Work (HS 2) Department dated 16.06.1992.

It was published as detailed below:-

1.T.N.G.G.	:	24.06.1992
2.Tamil Nadu News Papers Thinathoodu	:	26.06.1992
3.Tamil Nadu News Papers Namadu MGR	:	04.07.1992
4.In the locality	:	20.07.1992

The Draft declaration under Section 6 of the Land Acquisition Act (Central Act 1 of 1894) for the above extent of 5.60.0 hectares (or) 14.04 acres of dry lands was approved in G.O.Ms.No.642/PW (HS-2) Department dated 27.04.1993 and published in the TNGG issue No.223 Extra ordinary Part-II Section 2 dated 29.04.1993 at pages 1 to 7.

It was published as detailed below:

1.TNGG	:	29.04.1993
2.Tamil Nadu News Papers	:	
Vetrimalai and Makkal Kural	:	30.04.1993
3.In the locality	:	20.05.1993

7. The draft direction under Section 7 of the Land Acquisition Act 1894 was approved by the Government in their letter No.61641/ (HS-2)/93-1 Public Works (Highways) Department dated 03.08.1993 and published in the supplement to part II Section 2 issue No.32 dated 18.08.1993. The Special Tahsildar (Land Acquisition) unit II East Coast Road Project, Big Melamaiyur, Chengalpattu has been authorized to perform the function of the Collector under provision of Urgency clause under Sub Section (i) of Section 17 of the Land Acquisition Act 1894. The lands notified for acquisition has been duly demarcated, surveyed, measured and mapped under Section 8 of the Act. The area shown in this award is true and correct area of the land. The notice under Section 9(i) and 10 of the Land Acquisition Act 1894 was also published in the locality. The individual notices under Section 9(3) and 10 of the Act were also issued to the land owners calling for them to attend Award enquiry. The acquired lands were taken possession and handed over to the Highways Authority on

20.05.1995. The files relating to Chengalpattu Taluk were handed over to the office of the Revenue Divisional Officer, Chengalpattu, after the disbandment of the post of Special Tahsildar (Land Acquisition) Unit II, Chengalpattu. The East Coast Road has been formed already and is being maintained by the Tamil Nadu Road Development Company Limited.

8. In this case, the lands covered under acquisition in Award No.9/95 dated 19.05.1995 was passed and already taken possession as follows:

Sl.No .	No. of Patta and Name of the Pattadars (1)	Survey No. (2)	Extent Acquired (3)	In Acres (4)	Compensation Amount (in Rs.) (5)
1.	Patta No.757, Thiru.Sampath Naidu S/o Krishnasamy Naidu and five others	58/3B1 A1A	0.04.5	0.11	51,856.00
	Total		0.04.5	0.11	51,856.00

In response to the notice issued under Section 9(3) and 10 of the Land Acquisition Act 1 of 1894, neither the above pattadars nor their representatives have appeared for award enquiry. The compensation has been ordered in the award and it was to be kept in the Revenue Deposit since nobody claimed the same as per the procedure and it would be taken by them on production of documents and 10(i) chitta. According to the Award No.9/95 dated 19.05.1995, the petitioner is not the original owner of the said survey No.58/3B1A1A. The land has been registered in the name of petitioner Thiru.Sampath Naidu S/o Thiru.Krishnasamy Naidu and five others under patta No.757 in the village accounts. The Land owners have not appeared for award enquiry. Since the land owners did not appear, the Land Acquisition Officer could not apportion the compensation amount. Hence, the compensation amount was ordered to be kept in revenue deposit as per the procedure. The above land was acquired for East Coast Road and subdivided as S.No.58/3B1A1A to an extent of 0.04.5 hectares or 0.11 cents. The petitioner has purchased the land from the previous land owner under a registered sale deed dated 29.05.2006 as stated in the affidavit filed. The land acquisition proceedings have taken place in the year 1995 and the land was acquired and handed over to the Highways Authority on 20.05.1995. At present the petitioner is maintaining a zinc sheet roof attached to the shops in the acquired portion. The Government has sanctioned funds to execute the work for widening existing two lanes to four lanes. At present the encroachments in the Highways property (Acquired area) are dealt under Section 28(ii) to evict the encroachments. The respondent is a competent authority to issue eviction notice under Highways Act. There are no encroachments in the acquired area. The respondent is a competent authority to quash the eviction notice.

9. It is a fact that the notification under Section 4(i) of the Land Acquisition Act was approved by the Government in their G.O.Ms.No.852 Public Works (HS.2) Department dated 16.06.1992 and the Draft Declaration under Section 6 of the Land Acquisition Act was approved by the Government No.642 Public Works (HS.2) 93-1 dated 27.04.1993. The draft direction under Section 7 of the Land Acquisition Act was approved in Government Lr.No.61641/ (HS-2)/93-1 Public Works (Highways) Department dated 03.08.1993 and published in Government Gazette, Daily Newspaper and in the locality on various dates mentioned in this counter affidavit. In response to the notice issued under Section 9(3) and 10 of the Land Acquisition Act, the land owner has not appeared for award enquiry. The land acquisition proceedings were completed on 19.05.1995 under the urgency clause of sub Section 1 of Section 17 of the Land Acquisition Act 1 of 1894. The possession was taken over and handed over to the Highways authority on 20.05.1995. The petitioner has purchased the land from its previous owners on 2006 after the acquisition was over. The sale in his favour is void and the petitioner alone had encroached the land. The land acquisition being done. In the above circumstances, the petitioner is not entitled to any relief, since the award was passed and acquisition was completed in 1995. There are no merits in the petitioner's request.

10. Under Section 17(i) after passing award the possession was taken over by the Highways authority on 20.05.1995. As per the award No.9/95, dated 19.05.1995 the draft notification under Section 4(i), DD under Section 6 and DD under Section 7 of the Land Acquisition Act 1894 have been published in the name of Thiru.Sampath Naidu S/o Krishnasamy Naidu. The extent notified and declared are correct. In response to the notice issued under Section 9(3) and 10 of the Land Acquisition Act, the Land Owner has not appeared for award enquiry. The above land was acquired for East Coast Road and Subdivided as S.No.58/3B1A1A to an extent of 0.04.5 hectares or 0.11 cents. The possession was taken and handed over to Highways Authority on 20.05.1995. The Land Acquisition Proceedings were conducted by all formalities and procedures laid down in the Law. Hence, the petitioner's prayer deserves no merits and consideration. The land acquisition officer is not a party in the writ petition.

11. The respondent has further submitted that the Government has acquired the above lands for the public purpose for strengthening and widening the East Coast Road from two laning to four laning to reduce the frequent accidents. The respondent in this case is a competent authority to issue a notice under Section 28(ii) of Tamil Nadu Highways Act. So, there are no merits of the prayer of the petitioner. The land has been acquired according to the Law. There is no violation of his property rights guaranteed under Article 300-A of the Constitution of India. The land in S.No.58/3B1A1A to an

extent of 0.04.5 Hectares or 0.11 Cents have been acquired for widening and strengthening of East Coast Road. The acquired land was taken over possession and handed over to the Highways Authority on 20.05.1995. The land was acquired according to law and there is no violation. Hence, the prayer of the petitioner deserves no merits. The above land was acquired and taken possession on 20.05.1995 and handed over to the Highways Authority. The acquired area of the petitioner's land became the property of Highways Authority, in which the petitioner has put up a construction (Zinc Sheet Shed) which can only be treated as encroachments. He has submitted that the respondent has legal rights to issue notice to evict the encroachments. The petitioner has no valid grounds. In this case due to the fact that lands covered in the award has already been taken possession, the Government has sanctioned fund of Rs.272/- crores to execute the work by M/s.TNRDC for widening the East Coast Road from Two Lanes to Four Lanes as per the G.O.Ms.No.113 Highways and Minor Ports (HV2) Department, dated 15.07.2013. The petitioner is an encroacher and has no locus standi to file the writ petition.

12. The learned counsel Mr.V.Raghavachari, appearing for the petitioner submits that the subject matter of the land belonging to the petitioner that he had purchased the same in the year 1979, wherein the petitioner had put up a watchman's shed and the watchman is staying there and taking care and securing the land. The respondents had not issued any notices regarding acquisition proceedings. Under these circumstances, the petitioner has received impugned notice dated 27.12.2013 and called upon the petitioner to vacate the premises alleging that the land had been already acquired for the extension of National Highways. The impugned notice does not have adequate particular regarding Survey Number, boundaries and extension of property. Further, in the said notice does not reveal the land owner. The respondents had directed the petitioner to hand over the vacant land within a period of 7 days. As per Article 300(A), no person shall be deprived of his property save by the authority of law, the same was observed by the Hon'ble Apex Court of India. Actually, the respondents had not strictly adhered to the acquisition proceedings.

13. The very competent counsel further submits that the respondents have committed lapse, short coming and lack of procedure for acquiring the petitioner's land. The same was informed to the respondents by way of representation. The respondents on receiving the said representation have not passed any orders. The learned counsel further submits that the subject land is not required for the formation of National Highways. Further, the petitioner has not received any compensation from the respondents. Hence, the highly competent counsel entreats the Court to allow the above writ petition.

14. The learned Additional Government Pleader Mr.M.S.Ramesh, appearing for the respondents submits that the Government had decided on widening of the East Coast Road from Thiruvannamiyur to Cuddalore. Hence, the petitioner's land had been acquired under urgency clause of land acquisition act. The respondents had given notification in the Tamilnadu Government Gazette, the same was published in the Newspapers. Thereafter, a draft declaration was published in the year 1993. The acquired land had been duly demarcated, surveyed and measured accordingly. Individual notices had been issued to the respective land owners for attending the award inquiry, compensation amount also assessed and award passed. The land acquisition officer had handed over the subject lands to the Highway Authorities on 20.05.1995.

15. The highly competent counsel further submits that the acquired land had been utilized by the National Highways. The land acquired for the public purpose for strengthening and widening the East Coast Road from two laning to four laning for the convenience of transportation. Hence, the impugned notice had been issued which is suitable for execution.

16. Considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusal of the typed set of papers, it is seen that the land acquisition officer had given a publication in the year 1992 for acquiring the subject lands under Section 4 (1) of the old Act after invoking urgency clause of the act an order to bring about the formation of the "four laning road" for public transportation which is of paramount importance. Hence, the impugned notice had been issued as per the Tamilnadu Highways Act, under Section 27 and 28 considered suitable for execution. Therefore, the above writ petition is dismissed.

17. In the result, the above writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

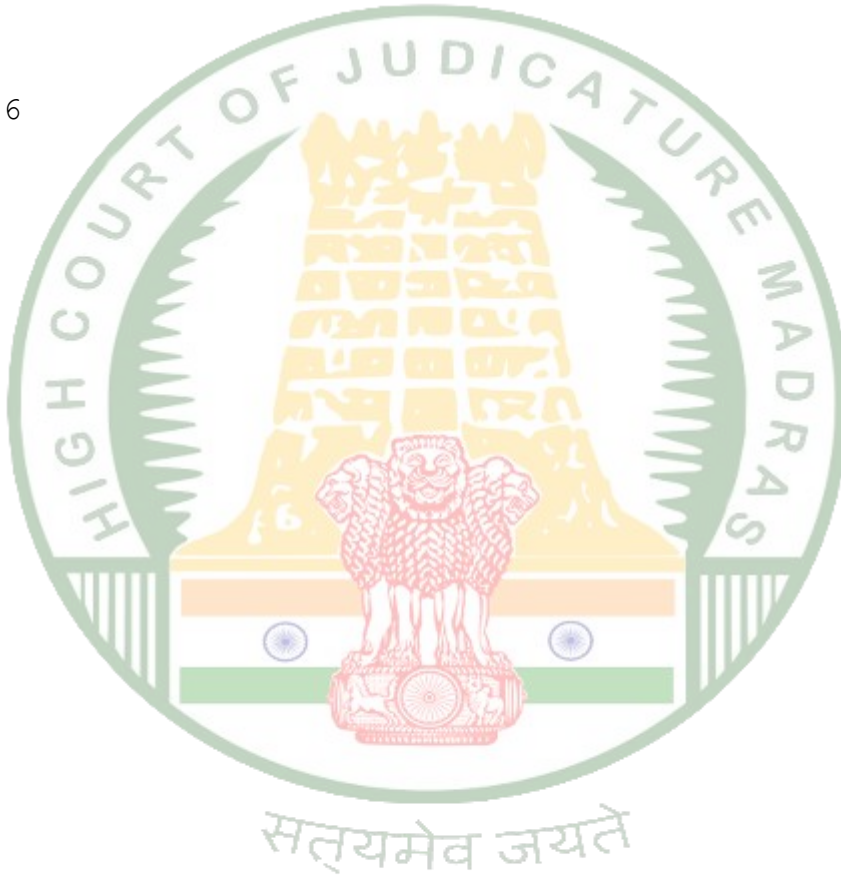
vs

To

The Assistant Divisional Engineer (Highways),
Construction and Maintenance Office,
Chengalpattu, Kancheepuram District.

W.P.No.11609 of 2014
and
M.P.No.1 of 2014

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