

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.No.15223 of 2015

and

M.P.Nos.1 and 2 of 2015 and W.M.P.No.23488 of 2016

1.K.G.Parthasarathy

2.P.Mahalakshmi

.. Petitioners

Vs.

- 1.The State of Tamil Nadu,
rep by the Principal Secretary to Government,
Highways and Minor Ports (HR2) Department,
Fort St. George, Chennai.
- 2.The District Revenue Officer (Land Acquisition),
Chennai Outer Ring Road Scheme-1,
Chennai Metropolitan Development Authority,
Koyambedu, Chennai-600 092.
- 3.Tamil Nadu Road Transport Development Company,
rep by its Project Director,
Greenways Road,
R.A.Puram, Chennai-600 028.
- 4.The Special Tahsildar (Land Acquisition),
Chennai Outer Ring Road Project-1,
Poonamallee, OMR Office,
Chennai.
- 5.The Tamil Nadu Small Industries
Development Corporation Ltd.,
rep by its Branch Manager,
Branch Office,
SIDCO Industrial Estate,
Thirumudivakkam,
Chennai-600 044
(R-5 impleaded vide order
dated 5.7.2016 in WMP No.19778 of 2016) .. Respondents

The writ petition has been filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to (i) the notice bearing Na.Ka.No.08/2013/O.R. Road/Kancheepuram, dated 12.9.2013 issued under section 15(2) of the Tamil Nadu

Highways Act, 2001 by the second respondent, (ii) the notice bearing G.O.Ms.No.161, Highways and Minor Ports (HF2) Department, dated 16.12.2014 issued under Section 15(1) of the Tamilnadu Highways Act, 2001 by the first respondent, (iii) the 3 notices bearing Na.Ka.No.08/2013/O.R.Road/Kancheepuram, dated 27.4.2015 issued by the fourth respondent under Section 16(2) of the Tamilnadu Highways Act, 2001 and (iv) the 3 notices bearing Na.Ka.No.08/2013/O.R.Road/Kancheepuram, dated 29.4.2015 issued under Sections 19(5) and (7) of the Tamilnadu Highways Act 2001 by the second respondent and to quash the same and consequently, to direct the respondents 1 to 4 to initiate fresh acquisition proceedings in accordance with the methods and procedures prescribed under the Tamil Nadu Highways Act, 2001 and the Tamil Nadu Highways Rules, 2003 by issuing notice to them, giving opportunity to state their objections. (Prayer Amended as per order of this court dated 27.07.2016 in WMP No.21782/2016)

For Petitioners : Mr.T.P.Manoharan, Senior Counsel
for Mr.T.M.Naveen

For Respondents: Mr.V.Ayyadurai,
Additional Advocate General,
assisted by Mr.K.Dhananjayan, Spl.G.P
for RR1,2 and 4

Mr.M.Sivavarthanan for R-3

Mr.Abdul Saleem for R-5

ORDER

Heard Mr.T.P.Manoharan, learned Senior Counsel appearing on behalf of the petitioners and Mr.V.Ayyadurai, learned Additional Advocate General, assisted by Mr.K.Dhananjayan, learned Special Government Pleader, appearing on behalf of the respondents 1,2 and 4, Mr.M.Sivavarthanan, learned counsel appearing on behalf of the third respondent and Mr.Abdul Saleem, learned counsel appearing on behalf of the fifth respondent.

2 The petitioner has stated that the Tamil Nadu Small Industries Development Corporation Limited, Chennai, (hereinafter referred to as "the SIDCO"), the fifth respondent herein, had sold an industrial Plot No.AC-23, comprised in R.S.Nos.145/2, 146/2 and 149/2, in the SIDCO Industrial Estate, at Tirumudivakkam, to one M/s.Shri Ramalinga Breads (P) Ltd. The possession of the said plot had also been handed over to the purchaser. Thereafter, M/s.Shri Ramanlinga Breads (P) Ltd. had sold the said industrial plot to the petitioners, by way of a registered sale deed, dated 11.10.2006. Pursuant to the said

sale, the petitioners had taken over the possession of the said plot. Thus, the petitioners had become the absolute owners of the plot in question, on and from 11.10.2006. By a letter, dated 23.4.2007, the fifth respondent had approved the sale of the plot in question, in favour of the petitioners. Thereafter, the petitioners had constructed additional industrial buildings and had installed expensive machineries therein, for the running of the industry. While so, during the year 2013, the second respondent had proposed to acquire a portion on the South Eastern corner of the industrial plot, owned by the petitioners, for the purpose of extending the junction of the road, running under the flyover of the Chennai Outer Ring road, at Tirumudivakkam, invoking the provisions of the Tamil Nadu Highways Act, 2001 (hereinafter referred to as "the Act"). The acquisition of a portion of the plot in question had been proposed by the second respondent, without issuing any notice to the petitioners, as provided under the relevant provisions of the Act and the Rules framed thereunder. Hence, the petitioners have preferred the present writ petition, before this Court, under Article 226 of the Constitution of India.

3 The learned Senior Counsel appearing on behalf of the petitioners had submitted that the respondents 1,2 and 4, their men and agents, have no authority or power to acquire a portion of the plot belonging to the petitioners, without following the methods and procedures prescribed under the Act and the Rules framed thereunder. As per Section 15(2) of the Act and the Rule 5 of the Tamil Nadu Highways Rules, 2003, (hereinafter referred to as "the Rules"), the second respondent ought to have issued the necessary notice to the petitioners, as they are the owners of the property, sought to be acquired. No show cause notice had been issued to the petitioners, asking them to show cause, as to why the property in question should not be acquired, for the proposed public purpose and an opportunity ought to have been given to the petitioners to attend the enquiry and to raise their objections, if any. Thus, it is clear that the respondents 1 and 2 ought to have followed the procedures prescribed under the Act and the Rules framed thereunder, in its letter and spirit. It had been further stated that before acquiring the land in question, the said respondents should have followed the procedures, including the issuance of notices, under Sections 15 (2), 15(1), 16(2) and 19(5) of the Act and the Rule 5 of the Rules. The said notices ought to have been issued to the petitioners, who are the owners of the property in question. The said respondents cannot act in a manner contrary to the methods and procedures prescribed in the relevant provisions of the Act and the Rules framed thereunder.

4 The learned Senior Counsel appearing on behalf of the petitioners had relied on a decision of the Supreme Court, made in Kunwar Pal Singh (dead) by LR's Vs. State of U.P and others, reported in (2007) 5 SCC 85, in support of his contentions. Paragraph 16 of the said decision reads as follows :

"16. Section 6(2), on a plain reading, deals with the various modes of publication and they are: (a) publication in the Official Gazette, (b) publication in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and (c) causing public notice of the substance of such declaration to be given at convenient places in the said locality. There is no option left with anyone to give up or waive any mode and all such modes have to be strictly resorted to. The principle is well settled that where any statutory provision provides a particular manner for doing a particular act, then, that thing or act must be done in accordance with the manner prescribed therefore in the Act."

5 The learned Senior Counsel had also submitted that if a particular procedure is prescribed for doing an act in a particular manner, the authorities concerned cannot follow a different method or procedure to achieve their purpose, as held by the Supreme Court in its decision cited supra.

6 The learned Senior Counsel had submitted that in the present case, the second respondent had issued the notice, under Section 15(2) of the Act, to the fifth respondent, erroneously, instead of issuing the same to the petitioners herein. Proper verification of the relevant records ought to have been made, by the second respondent herein, before issuing the said notice. The learned Senior Counsel had further stated that, even after coming to know about the fact that the land in question belongs to the petitioners, the second respondent had proceeded with the acquisition proceedings, without paying any heed to the objections raised by the petitioners, by their letter, dated 21.10.2013. As such, the notice issued by the second respondent, under Section 15(2) of the Act, is invalid in the eye of law.

7 The learned Senior Counsel had further submitted that the petitioners had sent a representation, dated 23.9.2014, to the second respondent herein, stating the facts relating to the matter and requesting him to issue a notice to the petitioners, under Section 15(2) of the Act. The petitioners had also

produced the copies of the relevant documents, including the title documents and the letter issued by the fifth respondent, dated 23.4.2007, approving the sale of the industrial plot in question, in favour of the petitioners. It had also been stated that the petitioners had sent another letter, dated 5.11.2014, asking the second respondent as to whether there was a proposal to acquire a portion of the industrial plot belonging to the petitioners and for the issuance of the notice, under Section 15 (2) of the Act, to the petitioners, if there was such a proposal. If the notice had been sent to the petitioners, with regard to the proposed acquisition, the petitioners would have submitted their detailed objections, along with the relevant documents, in support of their claims. However, such an opportunity had been denied to the petitioners, as the second respondent had not issued the statutory notice, under Section 15 (2) of the Act.

8 The learned Senior Counsel had further stated that even if the names of the real owners of the land, said to be acquired for the public purpose, are not entered in the revenue records, a duty would be cast on the authority concerned to issue a notice under Section 15(2) of the Act to the real owners of the property. The fact relating to the ownership of the property had been brought to the notice of the authorities concerned. The learned Senior Counsel had relied on the following decisions, in support of his contentions :

"(i) P.C.Thanikavelu Vs. The Special Deputy Collector for Land Acquisition, Madras and another, reported in AIR 1989 Madras 222;

(ii) Rama Devi Vs. The State of Tamil Nadu, rep by the Secretary to Government, Housing and Urban Development Department, Madras-9 and another, reported in 2000 (IV) CTC 129;

(iii) P.Tamilarasan Vs. State of Tamil Nadu, rep by Commissioner & Secretary Adi Dravidar Welfare Department, Fort St. George, Madras-9 and two others, reported in 1999 (I) CTC 586."

9 In the given facts and circumstances of the case, the second respondent was duty bound to issue a notice to the petitioners, under Section 15(2) of the Act, as the petitioners are the real owners of the property sought to be acquired. They should have been given an opportunity to raise their objections before proceeding with the acquisition of the said property. The failure of the second respondent in following the prescribed procedures would render the acquisition proceedings null and void.

10 It had been further stated that, in spite of the representation made by the petitioners, the first respondent had issued a notice, dated 16.12.2014, under Section 15(1) of the Act, to the fifth respondent, who is not the real owner of the property in question. Thereafter, the second respondent had sent the notice under Sections 16(2) and 19 of the Act, to the fifth respondent, to deliver the possession of the property in question, which is sought to be acquired, for the public purpose. The petitioners had come to know about the acquisition proceedings only after the fifth respondent had forwarded the notice issued to it, under Sections 16(2) and 19 of the Act, by way of a letter, dated 13.5.2015. Since there was no response from the concerned respondents, with regard to the representations made by the petitioners, they had been compelled to prefer the present writ petition, before this Court, under Article 226 of the Constitution of India.

11 The learned Senior counsel appearing on behalf of the petitioners had submitted that the entire acquisition proceedings, including the notices issued under Sections 15(1), 15(2), 16(2) and 19 of the Act are illegal, invalid and non-est, in the eye of law.

12 The learned Senior Counsel had relied on a decision of the Supreme Court, made in R.Sulochana Devi Vs. D.M.Sujatha and others, reported in 2004 (5) CTC 108 (SC), in support of the said contention.

13 The learned Senior Counsel appearing on behalf of the petitioners had also relied on a recent decision of the Supreme Court, made in Kedar Nath Yadav Vs. State of West Bengal and others, in Civil Appeal No.8438 of 2016, etc. batch, dated 31.08.2016, wherein it had been held as follows :

"64.In the instant case, what makes the acquisition proceedings perverse is not the fact that the lands were needed for setting up of an automobile industry, which would help to generate employment as well as promote socio economic development in the State, but what makes the acquisition proceedings perverse is that the proper procedure as laid down under Part VII of the L.A. Act read with Rules was not followed by the State Government....."

14 As the respondents 1 to 4 have initiated the acquisition proceedings, erroneously, without following the procedures established under the Act and the Rules framed

thereunder, and without giving an opportunity of hearing to the petitioners, contrary to the well established principles of natural justice, this Court may be pleased to call for the records, relating to the notices issued by the respondents 1,2 and 4 herein, under the Act and the Rules framed thereunder, and to quash the same and consequently, direct the respondents 1 to 4 herein to initiate a fresh acquisition proceedings, in accordance with the methods and procedures prescribed, under the said Act and the Rules framed thereunder.

15 In the counter affidavit filed on behalf of the respondents 1,2 and 4, it has been stated that the Government of Tamil Nadu had decided to form an Outer Ring Road, joining the Southern, Western and the Northern parts of the Chennai city, for a total length of 60.15 kms, in two phases. The proposed road would connect the G.S.T Road, starting from the Vandalur village, in Kancheepuram District and it would end at Minjur village, in Tiruvallur District. The key object of the project is to allow the heavy vehicles to continue its journey, when coming into the city of Chennai, without causing traffic congestion. The lands for the said project is being acquired in two phases. The Chennai Metropolitan Development Authority had acquired the lands, for the first phase, and it had taken possession of the lands, for a length of 29.65 kms., from Vandalur village, in Kancheepuram District to Nemilicheri village, in Tiruvallur District. The additional lands proposed to be acquired for the project is comprised in 14 villages in Kancheepuram District and 11 villages, in Tiruvallur District. The lands to be acquired, in the second phase, is for the length of 30.50 kms. It had been further stated that the Government of Tamil Nadu had passed orders, in G.O.Ms.No.32, Highways and Minor Ports (HF-2) Department, dated 25.2.2009, granting the necessary administrative sanction, for creating the necessary facilities, for the development of the outer ring road. The cost of the project had been estimated to be an amount of Rs.1081.40 crores, by the Government Order, in G.O.Ms.No.200, Highways and Minor Ports (HN-2) Department, dated 8.10.2009.

16 It had been further stated that, by the order passed, in G.O.Ms.No.68, Highways and Minor Ports (HN-2) Department, dated 18.4.2013, the necessary administrative sanction had been accorded, for the acquisition of 127185.91 sq.mtrs. of the patta lands and for the transfer of the Government lands, measuring an extent of 10,634.57 sq.mtrs. of lands, in 14 villages, in Kancheepuram District. The District Revenue Officer (Land Acquisition), Chennai Outer Ring Road Project, Chennai Metropolitan Development Authority, Koyambedu, Chennai, had been empowered to perform the functions of the land acquisition officer, under the Tamil Nadu Highways Act, 2001 and the Rules

framed thereunder. Further, a sum of Rs.184.81 Crores have been sanctioned towards the cost of the land to be acquired, in 14 villages, in Kancheepuram District, by way of the Government Order, in G.O.Ms.No.177, Highways and Minor Ports (HN-2) Department, dated 30.10.2013.

17 It had been further stated that the work had been awarded to M/s.GMR CORR Pvt. Ltd., and the development work had commenced, on 30.6.2010. The development work, includes the provision of project facilities, such as the construction of Inter-changes, at NH-45, NH-4, NH-205, Bus Bays, Truck Lay Bays, wayside amenities, major and minor junction improvements, etc. The construction of the road work had been completed, except the provision for the project facilities, for which additional lands are to be acquired, for the completion of the project.

18 It had also been stated that the extent of lands proposed for the acquisition, for providing of additional facilities, had been published in two daily newspapers, namely, ' Namadhu MGR' and 'Deccan Chronicle', on 19.9.2013. The local publication had also been made, in the office of the Divisional Engineer of the Highways Department (C & M), Chengalpattu, on 27.09.2013, and in the Taluk office, Sriperumbudur, on 28.9.2013 and in the office of the Village Administrative Officer, at Tirumudivakkam village, on 26.9.2013, as required under Rule 5 (1) of the Rules. The notice, under Section 15(2) of the Act, had been issued to the land owners, including the SIDCO, under patta Nos.775, Tirumudivakkam village. The said notice had also been served on M/s.International Flavors and Fragrances Pvt Ltd., the company, which had been functioning, at plot No.AC23. However, the petitioners had not produced any documentary evidence to prove their ownership of the lands in question, which is sought to be acquired. Hence, all the land acquisition process initiated by the respondents concerned are in accordance with the Act and the Rules framed thereunder.

19 It had been further stated that the proposed acquisition of lands, referred to in the writ petition, is for the formation of the Major Junction Improvement. The lands, in S.Nos.145, 146 and 149 stood in the name of the SIDCO, under patta No.775, in Tirumudivakkam village. The petitioners had not submitted any documentary evidence to substantiate their claim. Hence, the notices, relating to the acquisition of the lands in question, had been sent to SIDCO and the notices had also been served on M/s.International Flavors and Fragrances Pvt. Ltd., which is functioning at Plot No.AC23. The date for the enquiry fixed, as per the notice issued under Section 15(2) of the Act, was 21.10.2013. However, both the SIDCO, as well as the M/s.International Flavors and Fragrances Pvt. Ltd., had not

turned up for the enquiry.

20 It had been stated that a person, said to be the representative of the petitioner, had attended the enquiry, held under Section 15(2) of the Act and he had submitted a letter, raising objections for the acquisition of the lands in question. However, he had not submitted any documentary evidence to substantiate the claims made by the petitioners. The objection letter received from the person, said to be the representative of the petitioners, had been sent to the Divisional Engineer, Highways Department (C&M), Chengalpattu, for offering the necessary remarks. After getting the remarks of the requisitioning body, the necessary proposals, under Section 15 (1) of the Act, had been sent to the Government, with a copy of the objection received from the petitioners and the remarks of the Divisional Engineer (C&M), Chengalpattu. After due consideration, the Government had overruled the objection raised by the petitioners and had issued the notification, under Section 15(1) of the Act, in G.O.Ms.No.161, Highways and Minor Ports (HF-2) Department, dated 16.12.2014. It had also been published in the Tamil Nadu Government Gazette, Issue No.7, dated 18.2.2015. It had been further stated that there is no provision to communicate the decision taken by the Government, to the petitioners.

21 It had been further stated that as per Section 16(1) of the Act, when the notification, under Section 15(1) of the Act is published in the Tamil Nadu Government Gazette, the land in question vests, absolutely, in the Government, free from all encumbrances. In the present case, the Government had issued the order, under Section 15(1) of the Act, vide G.O.Ms.No.161, Highways and Minor Ports (HF-2) Department, dated 16.12.2014, and it had been published, in the Tamil Nadu Government Gazette notification, Issue No.7, dated 18.2.2015. Hence, the notice, under Section 16(2) of the Act, had been issued to the land owners, as per the revenue records available, asking for the surrender of the land in question to the Government. Since the mandatory provisions necessary for the acquisition of the land, as per the provisions of the Act, had already been followed, the land, referred to in the writ petition, is vested with the Government. As such, there is no illegality, in the acquisition of the land in question, as alleged by the petitioners, in the present writ petition. It had also been stated that, whenever the necessary documents are received from the petitioners, for proving the ownership of the land in question, an award enquiry would be conducted, as per the notice to be issued under Section 19(2) of the Act, before the passing of the Award, for determining the compensation.

22 In the counter affidavit filed on behalf of the third respondent, it had been stated that the third respondent is a Public Limited Company, incorporated in the year, 1998. The

third respondent had been appointed, as the Managing Associate, for implementing the Outer Ring Road Project, Phase-1, by the Government of Tamil Nadu, in its order, made in G.O.Ms.No.32, Highways and Minor Ports Department, dated 25.2.2009. The Government of Tamil Nadu had decided to form the Outer Ring Road, for a total length of about 60.15 kms., in two phases. The Government of Tamil Nadu had accorded the administrative sanction, for the development of the Outer Ring Road, Phase-1, under Design, Build, Finance, Operate and Transfer basis, in G.O.Ms.No.32, Highways and Minor Ports Department, dated 25.2.2009. The second respondent had acquired the lands, for the first phase, and took possession of the same, for a length of about 29.65 kms, from Vandalur village at NH-45, connecting Nazarethpettai, at NH-4 and upto Nemilicheri village, at NH-205, covering 29 villages. The lands, notified for the acquisition, from the petitioners herein, in G.O.Ms.No.161, Highways and Minor Ports Department, dated 16.12.2014, are required for providing a major junction, in the project road, in Tirumudivakkam village. The said land is necessary for the completion of the project. The requirement of the lands, in S.Nos.145, 146 and 149, at Tirumudivakkam village, is crucial, for the implementing the project, as they are required for providing the project facilities.

23 It had been further stated that the second respondent had published the notice, under Section 15(2) of the Act, in the newspapers and in the locality concerned. However, the petitioners had not raised any objection, before the second respondent, for acquiring the lands. However, during the enquiry, held on 21.10.2013, a representative of the petitioner had submitted a written objection and the same had been forwarded to the requisitioning body, for offering its remarks. After obtaining the remarks, the necessary proposal had been made, under Section 15(1) of the Act and it had been sent to the first respondent, along with a copy of the objection raised by the petitioners. The first respondent, after due consideration, had overruled the objection raised by the petitioner and had issued the notification, under Section 15(1) of the Act, in G.O.Ms.No.161, Highways and Minor Ports Department, dated 16.12.2014 and published the same in the Tamil Nadu Government Gazette. Therefore, the lands, said to be belonging to the petitioners, had been acquired, through due process of law and therefore, the writ petition is liable to be dismissed.

24 Thiru V.Ayyadurai, the learned Additional Advocate General, appearing on behalf of the official respondents 1,2 and 4, had submitted that the Government of Tamil Nadu had issued the Government Order, in G.O.Ms.No.32, Highways and Minor Ports Department, dated 25.2.2009, and had accorded the necessary

administrative sanction, for the project facilities development of the Chennai Outer Ring Road Project, Phase-1, on Design, Build, Finance, Operate and Transfer basis, under the public private partnership arrangement. By the said Government order, dated 25.2.2009, the third respondent had been appointed, as the Managing Associate, for the Chennai Outer Ring Road Project, Phase-1. Thereafter, the Government of Tamil Nadu had accorded the necessary administrative sanction, for the acquisition of 1,27,185.91 sq.mtrs, of the patta land and for the transfer of the Government lands, measuring an extent of 10,634.57 sq.mtrs., in 14 villages of Chengalpattu, Tambaram and Sriperumbudur Taluks.

25 It had been further stated, by the learned Additional Advocate General, that, on 19.9.2013, a public notice was issued, under Section 15(2) of the Act and it had been published in the newspapers, notifying to acquire the lands in question. As the patta for the said lands stood in the name of the SIDCO, namely, patta No.775, the notice had been sent to the said entity. The necessary local publication had also been made. The enquiry date had been fixed, to hear the objections, on 21.10.2013. The patta stood in the name of the SIDCO, in patta No.775. Hence, the notices had been issued to the SIDCO. The notice under Section 15(2) of the Act had also been sent to M/s.International Flavors and Fragrances Pvt. Ltd., who were in occupation of the lands. On the date of the enquiry, a representative of the petitioners had attended the enquiry and had submitted the written objections. Thereafter, after obtaining the remarks of the requisitioning body, the first respondent had overruled the objections raised by the petitioners and had issued the notification under Section 15(1) of the Act. Subsequently, the notices under Sections 16(2), 19 (5) and 19(7) of the Act had been issued to the SIDCO and to M/s.International Flavors and Fragrances Pvt. Ltd.

26 The learned Additional Advocate General, appearing on behalf of the respondents 1,2 and 4 had further submitted that when the mandatory requirements of the law had been complied with, substantially, and when no prejudice is shown to have been caused to the petitioners, due to the failure of the respondents concerned to serve the individual notices on them, this Court may not opt to interfere with the land acquisition proceedings, by invoking its writ jurisdiction, under Article 226 of the Constitution of India, as held in the following decisions :

- (i) Pesara Pushpamala Reddy Vs. G.Veera Swamy and others, reported in (2011) 4 SCC 306;
- (ii) State Vs. N.S.Gnaneswaran, reported in (2013) 3 SCC 594;
- (iii) Veeyel Enterprises Vs. State of Tamil Nadu and others, reported in 2015-3-L.W. 662.

27 From the submissions made by the learned counsels, appearing on behalf of the petitioners, as well as the respondents, and in view of the averments made in the affidavit filed in support of the writ petition and the counter affidavits filed on behalf of the respondents and on a perusal of the records available, it could be noted that the second respondent had issued a notice, under Section 15(2) of the Act, to the fifth respondent, namely, the Tamil Nadu Small Industries Development Corporation Limited, Thirumudivakkam, Chennai.

28 It is not in dispute that no notice had been issued to the petitioners, who are said to be the owners of the lands sought to be acquired, under Section 15(2) of the Act. However, from the records available, it could be seen that the said notice had also been issued to M/s. International Flavours and Fragrances Pvt. Ltd., the occupier of the lands, comprised in Survey Nos.145/2, 146/2 and 149/2, bearing Patta No.775, situated at Thirumudivakkam Village, Sriperumbudur, bearing patta No.775.

29 It is the specific claim of the petitioners that the lands sought to be acquired, bearing Plot No.AC-23, had been sold, by the fifth respondent, to M/s.Shri Ramalinga Breads (P) Ltd., under a sale deed, dated 24.01.2001, registered as Document No.130 of 2001. The possession of the said land had also been transferred, by the fifth respondent, to the said purchaser. Thereafter, the petitioners had purchased the said property, by way of a sale deed, dated 11.10.2006, registered as Document No.6293 of 2006, for valuable consideration. Pursuant to the said sale, the petitioners had taken over the possession of the lands in question.

30 The petitioners had also claimed that after the purchase of the lands in question, they had put up additional constructions and had installed expensive machineries. Even though, there had been certain typographical errors in the description of the property in question, the verification in the office of the Sub Registrar, Padappai, would confirm the purchase of the said lands, by the petitioners, as the said sale had been registered, on the file of the said Sub Registrar's Office.

31 From the submissions made on behalf of the respondents 1 to 4, and on a perusal of the original records placed before this Court, it is clear that no notice had been issued to the petitioners, under Section 15(2) of the Act, as no mutation had been taken place in the revenue records, showing the names of the petitioners, as the owners of the lands in question. It is

only on the information received from the fifth respondent, the petitioners had the knowledge about the acquisition of the lands, said to be belonging to them.

32 On obtaining such information, the petitioners had raised objections, before the second respondent, with regard to the acquisition of the lands, said to be belonging to them. However, no proper enquiry had been conducted, by the second respondent, as provided under Rule 5 of the Tamil Nadu Highways Rules, 2003. Even though, the petitioners had raised their objections, before second respondent, against the acquisition of the lands in question, within the time limit prescribed therein, the authority concerned had not fixed the date for the hearing the objectors, by giving notice thereof, to the objectors, as well as to the Highways Department, as stipulated in Rule 5(2) of the said Rules. Thereafter, the copies of the objections raised by the objectors, should be forwarded, to the Highways Department.

33 On receipt of the copies of the objections, the Highways Department may opt to file a statement, by way of answers to the objections raised, within the time limit prescribed for the said purpose. As per Rule 5(2) of the Rules, the authority concerned shall hear the objectors and the representative of the Highways Department and record the evidence, if any, that may be produced in support of the objections and in support of the need for acquiring the land in question.

34 Thereafter, all the details of the enquiry, shall be submitted to the Government, to pass necessary orders, under sub section 3 of section 15 of the Act, as prescribed under Rule 5 (4) of the Rules. However, it has not been demonstrated, before this Court that such procedures, as prescribed under Rule 5 of the Rules, had been strictly followed, by the respondents concerned.

35 It may be true that no mutation had taken place in the revenue records showing the petitioners, as the owners of the land sought to be acquired. However, it has been admitted, by the respondents 1 to 4, that no notice under Section 15(2) of the Act had been served on the petitioners, till date.

36 The learned counsels, appearing on behalf of the respondents 1 to 4 had contended that the requirement, under Section 15(2) of the Act, had been substantially complied, with as the objections raised by the petitioners had been sent to the Divisional Engineer, Highways Department (C&M), Chengalpattu, for offering the necessary remarks. After

obtaining the remarks from the requisitioning body, the necessary proposals had been sent to the Government, with a copy of the objections received from the petitioners, along with the remarks of the Divisional Engineer (C & M), Chengalpattu. After due consideration, the Government had overruled the objections raised by the petitioners and had issued a Notification, under Section 15(1) of the Act, in G.O.Ms.No.161, Highways and Minor Ports (HF-2) Department, dated 16.12.2014 and had also published the same in the Tamil Nadu Government Gazette, in Issue No.VII, dated 18.2.2015.

37 It has also been contended, on behalf of the respondents 1 to 4, that there is no provision for communicating the decision of the Government, to the petitioners.

38 However, this Court is of the view that the contentions raised on behalf of the respondents 1 to 4 cannot be accepted, as the procedures prescribed, under Section 15(2) of the Act and the Rule 5 of the Rules had not been complied with, in letter and spirit.

39 It has been held, by the Division Bench of this Court, in R.Sulochana Devi vs. D.M.Sujatha and others, reported in 2004 (5) CTC 108 that, "an order passed without notice to a party, who is to be heard, is a nullity and it could be considered to be non-est in the eye of law."

40 Further, a Full Bench of this Court had held, in P.C. Thanikavelu vs. The Special Deputy Collector for Land Acquisition, Madras and another, reported in AIR 1989 Madras 222 that, "the authority concerned, who is the statutory functionary, cannot decline to afford an opportunity to the person, who is really interested in the land in question, even though his name is not found in the revenue records and if such fact is brought to the notice of the authority concerned."

41 It has also been held that the Government has the prerogative right to acquire the lands belonging to the individuals, for a public purpose, under the theory of 'Eminent Domain'. However, the rule of law, which governs and controls the executive functions, is the golden thread that runs through the fabric of constitutional democracy and therefore, the authority of the Government concerned ought to have act fairly and reasonably, by following the principles of natural justice.

42 It is a well settled position in law that when a statute provides a particular manner for doing a particular act, the said act ought to be done in accordance with the

manner prescribed in the statute in question and not in any other manner. The said dictum had been laid down by the Apex Court in Kunwar Pal Singh (Dead) by Lrs. vs. State of U.P. and others, reported in (2007) 5 SCC 85.

43 However, it could be seen, from the facts and circumstances of the present case, that the authority concerned, had not followed the procedures prescribed under the Act and the Rules framed thereunder, for the acquisition of the lands said to be belonging to the petitioners, for the formation of the Outer Ring Road - Phase-I.

44 The claim made on behalf of the respondents 1 to 4 that there has been substantial compliance of the statutory provisions would not be sufficient to reject the claim made by the petitioners, in the present writ petition. Even though, it may be necessary for the respondents 1 to 4 to acquire the lands, said to be belonging to the petitioners, they could do so, by following the necessary procedures prescribed in the Act, as well as the Rules framed thereunder.

45 In spite of the fact that the petitioners had brought to the notice of the authorities concerned that they are the owners of the lands in question, which were sought to be acquired, the authorities concerned had continued to send the notices, under Section 15(2), 16(2) and 19(5) and 19(7) of the Act, to the fifth respondent herein and not to the petitioners, and therefore, the procedures followed by the respondents 1 to 4 herein, are contrary to the relevant provisions of law and the principles of natural justice, as well as the dictum laid down by the Supreme Court in the decisions cited supra.

46 As it is clear that the respondents 1 to 4 had not followed such procedures prescribed in the relevant provisions of the Act and the Rules, this Court is constrained to hold that the notice issued by the second respondent, under Section 15(2) of the Act, dated 12.9.2013, cannot be held to be valid in the eye of law. Accordingly, it is quashed. Consequently, the notice issued under Section 15(1) of the Act, by the first respondent, in G.O.Ms.No.161 Highways & Minor Ports (HF2) Department, dated 16.12.2014, and the notices issued under Section 16(2), 19(5) and 19(7) of the Act, by the authorities concerned, cannot be held to be valid in the eye of law, in so far as it relates to the lands said to be belonging to the petitioners, comprised in Survey Nos.145/2, 146/2 and 149/2, situated in the SIDCO Industrial Estate, Thirumudivakkam, Kancheepuram District and accordingly, they are also quashed.

47 In fine, the present writ petition, filed by the petitioners, stands allowed. However, it goes without saying that it would be open to the authorities concerned to acquire the lands in question, for the purpose for which they were sought to be acquired, by following the procedures established under the Tamil Nadu Highways Act, 2001 and the Rules framed thereunder. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vvk/rnb

To

- 1.The Principal Secretary to Government,
The State of Tamil Nadu,
Highways and Minor Ports (HR2) Department,
Fort St. George, Chennai.
- 2.The District Revenue Officer (Land Acquisition),
Chennai Outer Ring Road Scheme-1,
Chennai Metropolitan Development Authority,
Koyambedu, Chennai-600 092.
- 3.The Project Director,
Tamil Nadu Road Transport Development Company,
Greenways Road, R.A.Puram, Chennai-600 028.
- 4.The Special Tahsildar (Land Acquisition),
Chennai Outer Ring Road Project-1,
Poonamallee, OMR Office, Chennai.
- 5.The Branch Manager,
The Tamil Nadu Small Industries
Development Corporation Ltd.,
Branch Office,
SIDCO Industrial Estate,
Thirumudivakkam,
Chennai-600 044

- 1 cc to Mr.M.Sivavarthanan, Advocate, sr.52578
1 cc to Mr.Abdul Saleem, Advocate, sr.52634
1 cc to The Government Pleader, sr.34714 & 52810

W.P.No.15223 of 2015

gr co

kra 18.10.2016