

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P. No.5081 of 2011

and M.P.Nos.1 and 2 of 2011

Francis Cedric D'Cruz

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Petitioner

Vs.

1. The Special Deputy Collector (LA)
Tamil Nadu Urban Development Project III
No.15, M.G. Nagar Main Road,
Near Sri Vigneswara Theatre,
Poonamallee, Chennai - 600 056.

2. The Secretary to Government
of Tamil Nadu,
Highways and Minor Ports Department,
Fort St. George, Chennai - 600 009.

3. The Chief Engineer (Metro)
Highways Department,
Alandur, Chennai - 16.

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Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India for issue of writ of certiorari calling for the records pertaining to the issue of Show Cause Notice under Section 15 (2) of the Tamil Nadu Highways Act 2001 in Na.Ka.No.48/2006/Aa dated 30.09.2009 issued by the first respondent and the subsequent Government gazette notification made in G.O.Ms.7, Highways and Minor Ports (HW2) dated 13.1.2011 published in the Tamil Nadu Government Gazette No.4, Part II, Section 2 published on 2.2.2011 by the second respondent in respect of the petitioner's land and house property in TS No.35/1, Old S.No.816B/2A1B, measuring 13 sq.mtrs. In Ward No.E, Block No.45, 46 Korattur Village, Ambattur Taluk, Tiruvallur District bearing New No.9, Old No.4, South Railway Station Road, Venkatraman Nagar, Korattur, Chennai - 600 080 and quash the same.

For Petitioner : Mr.M.S.Subramanian

For Respondents: Mrs.A.Srijayanthi
Special Govt. Pleader

O R D E R

The petitioner has challenged the land acquisition proceedings initiated by the respondents in respect of the portion of the property comprised in T.S No.35/1, Old S.No.816B/2A1B, Block No.45, measuring 13 sq.mtrs. In Ward No.E, Korattur Village, Ambattur Taluk, Tiruvallur District bearing Door No.9, Old No.4, South Railway Station Road, Venkatraman Nagar, Korattur, Chennai - 600 080.

2. It is seen from the records that 15 (1) and 15 (2) notice have been issued in the name of a dead person namely I.V.D.Cruz who is no more at the time of issuance of notice. On that sole ground, the writ petition has to be allowed. Interest of justice requires an order to sustain the land acquisition proceedings for the benefit of the public. Moreover, the petitioner who is the legal heir of I.V.D.Cruz is ready to give up the challenge made to the acquisition proceedings and he has filed an affidavit to that effect.

3. The petitioner is the owner of the aforesaid property and the said property is sought to be acquired by the respondents for laying railway under bridge. In this regard, the respondents issued notification under Section 15 (2) of the Tamil Nadu Highways Act 2001 on 13.09.2009. The purpose for acquisition is for railway under bridge near Korattur Railway Station and the petitioner filed objection on 14.10.2009.

4. According to the petitioner, he was asked to appear for enquiry on 03.11.2009, however, there was no enquiry on that date and subsequently, 15 (1) notice was issued. Without following the procedures contemplated under Rule 5 of the Tamil Nadu Highways Rules 2003, the respondents proceeded with the acquisition proceedings. Rule 5(2) of the Tamil Nadu Highways Rules 2003 contemplates that if any objection is received from a person interested in the land within the time prescribed in the public notice, enquiry should be fixed for hearing the objections. However, no enquiry was conducted and therefore, the petitioner has challenged the entire proceedings for non-compliance of mandatory provisions stating that the statutory enquiry under Section 15 (2) has not been complied with and Section 2 of the Tamil Nadu Highways Act has not been complied with. Moreover, it is contended that there was non-application of mind by the Government in issuing notice for Section 15 (1).

5. A counter affidavit has been filed stating that all the provisions of the Act has been complied with. Moreover, it is stated that for public purpose only, the railway under bridge is being constructed near Korattur Railway Station near Level Crossing No.4.

6. After hearing both the parties, it is evident that though the proceedings initiated by the respondents are not valid as it was proceeded against a dead person, the interest of justice requires to hold the proceedings valid in the interest of public and the rights of both the parties could be safe guarded if the width of the proposed service road is reduced from 5.50 meters to 3.75 meters and the width of storm water drain cum foot path is reduced from 1.5 meters to 1.25 meters. If such a reduction is made, the petitioner agrees for giving up the entire challenge to the proceedings and he is also ready to give possession of the entire property.

7. In view of the above position, this court, though concludes that the entire proceedings are valid, only to safe guard the public interest and also to get the possession of the property at the earliest, for the purpose of executing the project, directs the respondents to reduce the proposed service road from 5.50 meters to 3.75 meters and the width of the storm water drain cum foot path from 1.5 meters to 1.25 meters. Other than the concession given above, the entire proceedings are held to be valid. Since the petitioner is ready to handover the acquired possession of the property except the modification made above, this order has been passed and it should not be treated as a precedent in any other case. In this regard, an undertaking affidavit has also been filed by the petitioner and relevant portion of para 5 of the same is usefully extracted as follows -

5. I further respectfully state that I hereby swear to this affidavit declaring and affirming that though I have challenged the entire acquisition proceedings itself in the writ petition, if the width of the proposed service road is reduced to 3.75 m. from 5.50 meters and the width of the storm water drain cum foot path is reduced from 1.5 meters to 1.25 meters, I will be willing to give up the original prayer in the writ petition and co-operate for the completion of the project.

8. As far as the compensation is concerned, the petitioner is entitled to get compensation in accordance with law.

9. This writ petition is disposed of in the following terms.

(a) the proceedings are valid in accordance with law ;

(b) The respondents, in the facts and circumstances of the case are directed to reduce the width of the proposed service road to 3.75 meters from 5.50 meters and reduce the width of the storm water drain cum foot path from 1.5 meters to 1.25 meters ;

(c) the petitioner is entitled to compensation in accordance with law ;

(d) the petitioner is directed to hand over possession of the property to the respondents on or before 31.01.2017.

No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Special Deputy Collector (LA)
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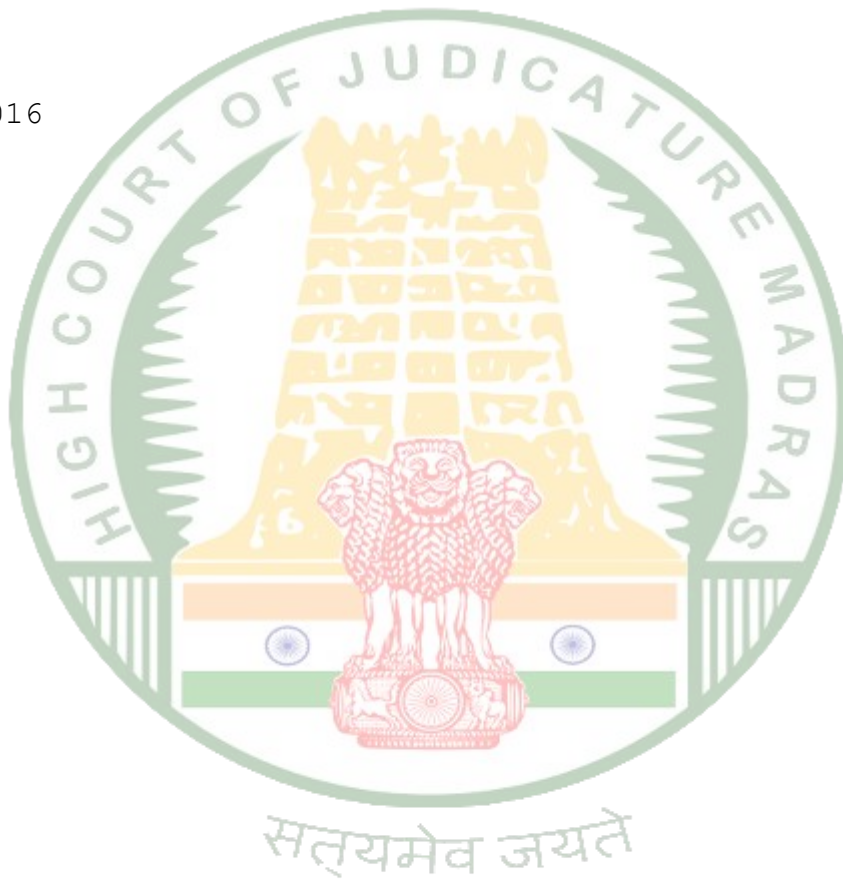
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+1 cc to Mr.M.S.Subramanian Advocate sr 60697/16

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