

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P. No.5548 & 33908 of 2015
and M.P.Nos.1 & 2 of 2015 (4 MPs)

R.Balamurugan ... Petitioner in WP No.5548/2015
A.Sankar Raj ... Petitioner in WP No.33908/2015

Vs.

1.State of Tamil Nadu,
Rep. by Secretary to Government
Highways and Minor Ports Department,
Fort St. George, Chennai - 600 009.

2.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.

3. The Assistant Divisional Engineer (H),
Chennai Metropolitan Development Project,
Sub Division, Saidapet,
Chennai - 600 015.

... Respondents in both WPs

PRAYER in WP No.5548/2015 : Writ petition filed under Article 226 of the Constitution of India for issue of writ of certiorarified mandamus calling for the records relating to the impugned notice dated 30.09.2009 in reference in Na.Ka.No.48/2006/A issued by the second respondent under Section 15 (2) under Tamil Nadu Highways Act and the subsequent notice published under Section 15 (1) in G.O.No.7, Highways and Minor Ports (HW2), dated 13.01.2011 published in Tamil Nadu Government Gazette No.4, dated 2.2.2011 on the file of the first respondent and consequent notice in reference Letter No.416/2014 dated 24.11.2014 on the file of the third respondent and quash the same and consequently forbearing the respondents from taking possession of the lands in T.S.No.71, sub-divided as S.No.71/2, situate within Ward No.E, Block No.45 of an extent of 35 square meters at Chennai Ambattur Municipality, Ambattur Taluk, Tiruvellore District.

PRAYER in WP No.33908/2015 : Writ petition filed under Article 226 of the Constitution of India for issue of writ of certiorarified mandamus calling for the records relating to the impugned notice dated 30.09.2009 in reference in Na.Ka.No.48/2006/A issued by the second respondent under Section 15 (2) under Tamil Nadu Highways Act and the subsequent notice published under Section 15 (1) in G.O.No.7, Highways and Minor Ports (HW2), dated 13.01.2011 published in Tamil Nadu Government Gazette No.4, dated 2.2.2011 on the file of the first respondent and consequent notice in reference Letter No.416/2014 dated 24.11.2014 on the file of the third respondent and quash the same and consequently forbearing the respondents from taking possession of the lands in T.S.No.71, sub-divided as S.No.71/2, situate within Ward No.E, Block No.45 of an extent of 35 square meters at Chennai Ambattur Municipality, Ambattur Taluk, Tiruvellore District.

For Petitioners : Mr.J.R.K.Bhavanantham
in both WPs

For Respondents : Mrs.A.Srijayanthi
in both WPs Special Govt. Pleader

O R D E R

The petitioners have challenged the land acquisition proceedings initiated by the respondents in respect of the properties comprised in T.S.No.71, sub-divided as S.No.71/2, situate within Ward No.E, Block No.45 of an extent of 35 square meters at Chennai Ambattur Municipality, Ambattur Taluk, Tiruvellore District.

2. The petitioners are the owners of the aforesaid properties and the said properties are 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 30.09.2009. The purpose for acquisition is for railway under bridge near Korattur Railway Station and the petitioners filed objection on 14.10.2009.

3. According to the petitioners, they were 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 petitioners have 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).

4. 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 in Korattur Level Crossing Railway Station at LC 4.

5. After hearing both the parties, it is evident that though the proceedings initiated by the respondents are valid, the interest 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 petitioners agree for giving up the entire challenge to the proceedings and they are also ready to give possession of the entire properties.

6. 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 properties 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 petitioners are ready to handover the acquired possession of the properties 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, undertaking affidavit has also been filed by the petitioners 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.

7. As far as the compensation is concerned, the petitioners are entitled to get compensation in accordance with law.

These writ petitions are disposed of with 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 petitioners are entitled to compensation in accordance with law ;
- (d) the petitioners are directed to hand over possession of the properties to the respondents on or before 31.01.2017.

No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rgr

1. The Special Deputy Collector (Land Acquisition)
Tamil Nadu Urban Development Project III,
Chennai at Poonamallee,
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.

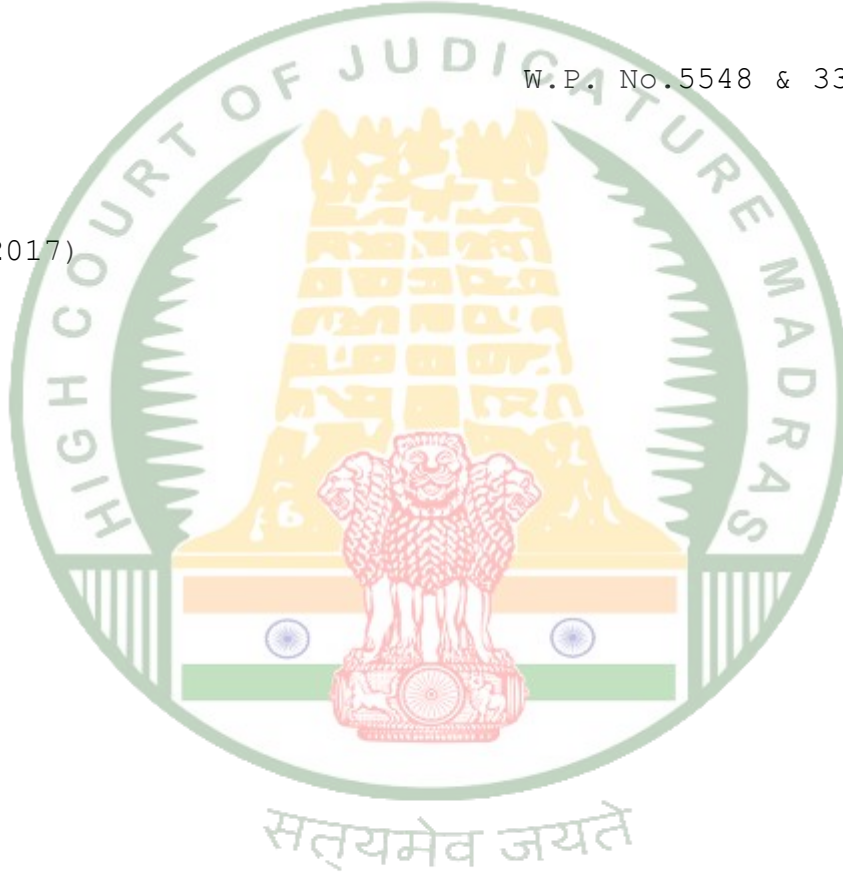
3. The Chief Engineer (Metro)
Chennai Metropolitan Development Project,
Highways Department,
Alandur, Chennai - 600 016.

4.The Assistant Divisional Engineer(H),
Chennai Metropolitan Development Project,
Sub Division, Saidapet,
Chennai 600 015.

+2cc to Mr.J.R.K.Bhavananthan, Advocate SR.No.61235, 61236

W.P. No.5548 & 33908 of 2015

SAI (CO)
GN(04/07/2017)



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