

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P. Nos.19875 & 19876 of 2013
and M.P.Nos.3 of 2013 (2 MPs) and
M.P.Nos.1 of 2014 (2 MPs)

V.Mohana

..Petitioner in both WPs

Vs.

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)
Highways Department,
Alandur, Chennai - 600 016.

4.Zonal Officer, Zone - VII
Corporation of Chennai,
Thiruvallur High Road,
Opp.Dunlop, Chennai - 53.

..Respondents in both WPs

PRAYER in WP No.19875/2013 : Writ petition filed under Article 226 of the Constitution of India for issue of writ of certiorari calling for the records of the first respondent in Na.Ka.No.48/2006A dated 30.09.2009 and the subsequent Gazette Notification made in G.O.Ms.No.7 of 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 land and house property in Ward E, Block No.45, T.S.No.1 now sub-divided as Survey No.1/2, admeasuring to an extent of 56 square meters, Korattur Village, Ambathur Taluk, Thiruvallur District, Survey No.816 B/2B, Door No.1294, 72 Street Tiruvallur District, Chennai

- 600 080 and quash the same as illegal, unconstitutional and nonest in law.

PRAYER in WP No.19876/2013 : Writ petition filed under Article 226 of the Constitution of India for issue of writ of certiorari calling for the records of the first respondent in Na.Ka.No.48/2006A dated 30.09.2009 and Na.Ka.749/2010 A1, dated 31.5.2013, and the subsequent Gazette Notification made in G.O.Ms.No.7 of 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 land and house property in Ward E, Block No.45, T.S.No.32/2 now sub-divided as Survey No.32/3, admeasuring to an extent of 37 square meters, Korattur Village, Ambathur Taluk, Thiruvalloor District, Survey No.816/132 Door No.816/2 & 72 Street, Thiruvalloor District Chennai - 600 080 and quash the same as illegal, unconstitutional and nonest in law.

For Petitioner : Mr.B.Vijay
in both WPs

For Respondents: Mrs.A.Srijayanthi
in both WPs 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 properties comprised in Ward E, Block No.45, T.S.No.1 now sub-divided as Survey No.1/2, admeasuring to an extent of 56 square meters and T.S.No.32/2 now sub-divided as Survey No.32/3, admeasuring to an extent of 37 square meters, Korattur Village, Ambathur Taluk, Thiruvalloor District, Chennai - 600 080.

2. The petitioner is the owner 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 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.

3. According to the petitioner, she 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).

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 near Korattur Level Crossing Railway Station near Level Crossing No.4.

5. After hearing both the parties, it is evident that though the proceedings initiated by the respondents are not valid, 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 she is 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 petitioner is 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, an undertaking affidavits have 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.

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

This writ petitions are 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.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Deputy Collector (Land Acquisition)
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Chennai at Poonamallee,
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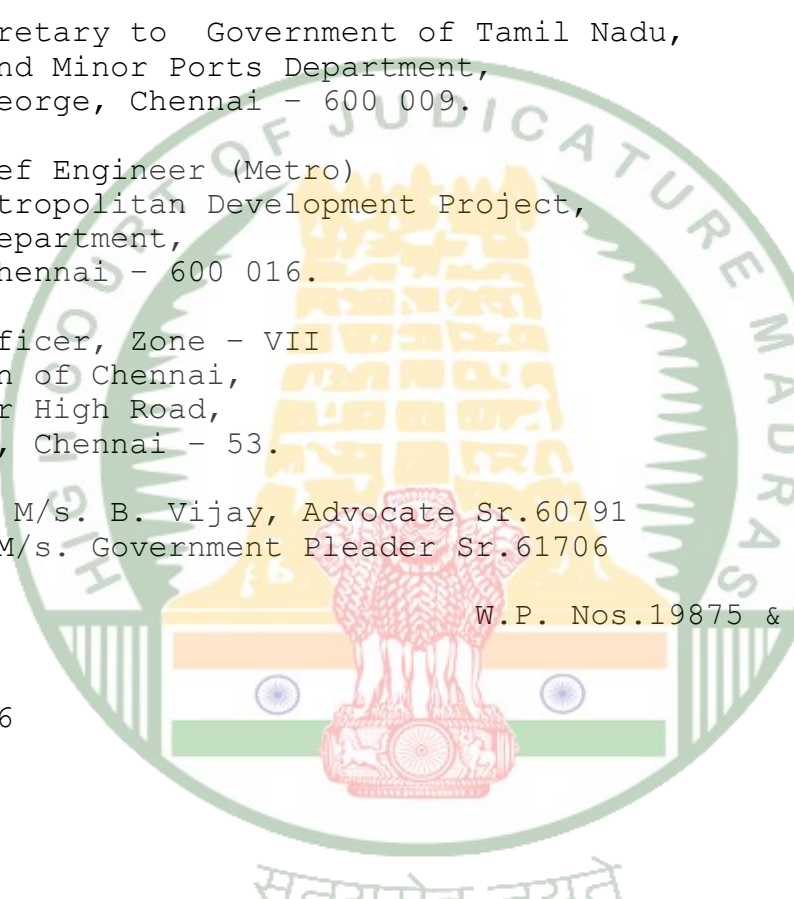
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Chennai Metropolitan Development Project,
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+ 2 ccs to M/s. B. Vijay, Advocate Sr.60791
+ 1 cc to M/s. Government Pleader Sr.61706

W.P. Nos.19875 & 19876 of 2013

SM(CO)
Eu 08.12.16

The seal of the High Court of Madras is a circular emblem. It features a central image of the Lion Capital of Ashoka, which is a four-lion capital standing on a base. The capital is flanked by two smaller lions. The entire emblem is set against a background of a green and white striped field. The words "HIGH COURT OF JUDICATURE MADRAS" are inscribed in a circular border around the central image. Below the seal, the motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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