

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P. Nos.19997 & 19998 of 2013
and M.P.Nos.2 of 2013 (2 MPs) and
M.P.Nos.1 of 2014 (2 MPs)

M.Manoj Kumar Jain ...Petitioner WP No.19997/2013

M.Jaichand ...Petitioner WP No.19998/2013

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)
Chennai Metropolitan Development Project,
Highways Department,
Alandur, Chennai - 600 016.

...Respondents in both WPs

PRAYER in WP No.19997/2013 : Writ petition filed under Article 226 of the Constitution of India for issue of writ of certiorarified mandamus calling for the records pertaining to the issue of impugned Show Cause Notice under Section 15 (2) in Na.Ka.No.48/2006A dated 30.09.2009 issued by the 1st respondent, impugned G.O.Ms.No.7, Highways and Minor Ports (HW2) dated 13.01.2011 published on 2.2.2011 by the 2nd respondent and impugned award in reference No.4/2013 dated 31.05.2013 in Na.Ka.No.749/2010/A1 passed by the 1st respondent in respect of the petitioner's land and building measuring an extent of 2536 sq.ft. comprised in T.S.No.117 now sub-divided as 117/2, Old S.No.977/2A, New Survey No.977/2A/4B/1A/1A, Block No.44, Ward No.E, Korattur Village, Ambattur Taluk, Thiruvallur District bearing New Door No.4, Old No.3, South Railways Station Road, Venkatraman Nagar, Korattur, Chennai - 600 080 and quash the

same as illegal and unconstitutional and forbearing the respondents from taking possession of the said property.

PRAYER in WP No.19998/2013 : Writ petition filed under Article 226 of the Constitution of India for issue of writ of certiorarified mandamus calling for the records pertaining to the issue of impugned Show Cause Notice under Section 15 (2) in Na.Ka.No.48/2006/A dated 30.09.2009 issued by the 1st respondent, impugned G.O.Ms.No.7, Highways and Minor Ports (HW2) dated 13.01.2011 published on 2.2.2011 by the 2nd respondent and impugned award in reference No.4/2013 dated 31.05.2013 in Na.Ka.No.749/2010/A1 passed by the 1st respondent in respect of the petitioner's land and building measuring an extent of 3028 sq.ft. comprised in T.S.No.123 now sub-divided as 123/2, Old S.No.977/2A, New Survey No.977/2A/4B/1A1, Block No.44, Ward No.E, Korattur Village, Ambattur Taluk, Thiruvallur District bearing New Door No.4, Old No.3, South Railway Station Road, Venkatraman Nagar, Korattur, Chennai - 600 080 and quash the same as illegal and unconstitutional and forbearing the respondents from taking possession of the said property.

For Petitioners : Mr.K.Raja
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 portion of the properties comprised in T.S.No.117 now sub-divided as 117/2, Old S.No.977/2A, New Survey No.977/2A/4B/1A/1A, Block No.44, Ward No.E, Korattur Village, Ambattur Taluk, Thiruvallur District bearing New Door No.4, Old No.3, South Railways Station Road, Venkatraman Nagar, Korattur, Chennai - 600 080 and T.S.No.123 now sub-divided as 123/2, Old S.No.977/2A, New Survey No.977/2A/4B/1A1, Block No.44, Ward No.E, Korattur Village, Ambattur Taluk, Thiruvallur District bearing New Door No.4, Old No.3, South Railway Station Road, Venkatraman Nagar, Korattur, Chennai - 600 080.

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 13.09.2009. 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 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 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, an 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 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 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.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rgr

TO

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.

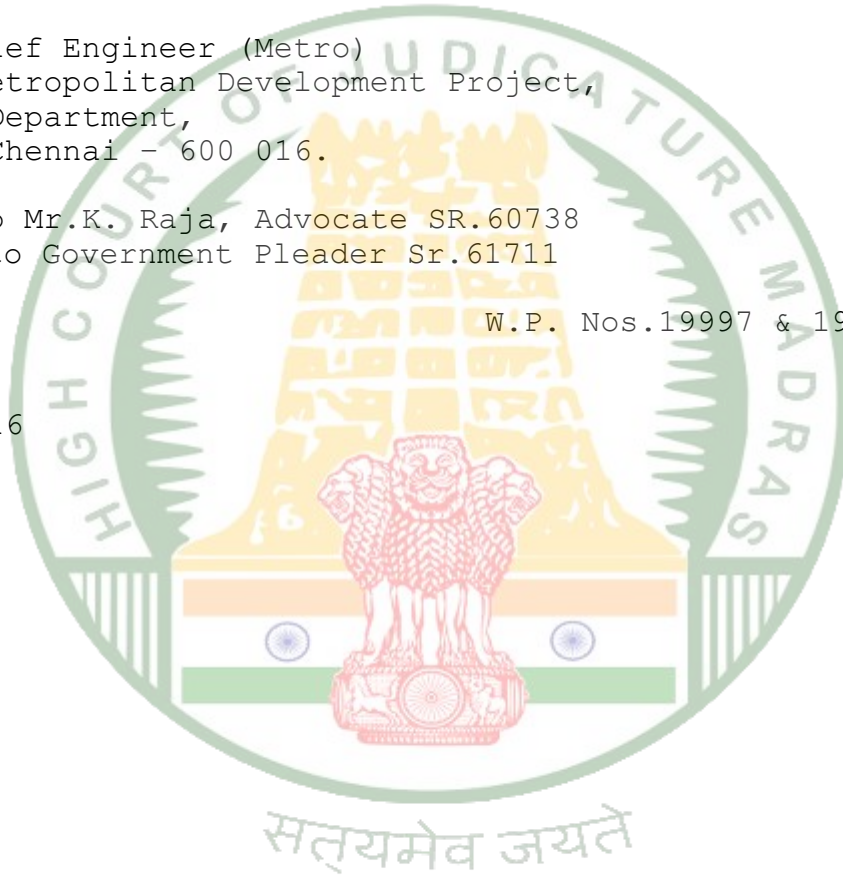
2. The Secretary to Government of Tamil Nadu,
Highways and Minor Ports Department,
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3. The Chief Engineer (Metro)
Chennai Metropolitan Development Project,
Highways Department,
Alandur, Chennai - 600 016.

+ 2 ccs to Mr.K. Raja, Advocate SR.60738
+ 1 cc to Government Pleader Sr.61711

W.P. Nos.19997 & 19998 of 2013

KJI (CO)
Eu 09.12.16



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