

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.09.2016
DELIVERED ON : 14.09.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.26794 of 2004
and W.M.P.No.24031 of 2016

M/s.CEEDEEYES STANDARD TOWERS PVT. LTD.,
REP. BY THE MANAGING DIRECTOR,
42, SECOND MAIN ROAD,
GANDHI NAGAR, ADYAR,
CHENNAI-20. Petitioner

Vs.

- 1 THE DISTRICT COLLECTOR OF CHENNAI,
RAJAJI SALAI, CHENNAI-1.
- 2 THE SPECIAL TAHSILDAR (LA),
HIGHWAYS, MAMBALAM-GUINDY TALUK,
TALUK OFFICE COMPLEX,
ASHOK NAGAR, CHENNAI-78.
- 3 THE COMMISSIONER (ULC),
ALANDUR, CHENNAI-16.
- 4 THE EXECUTIVE ENGINEER (PWD),
KANCHIPURAM.
- 5 THE SECRETARY,
HIGHWAYS DEPARTMENT,
GOVT OF TAMILNADU,
FORT ST. GEORGE, CHENNAI-9. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the notice in Form A and dated 22.07.2004 in ref. No.MG/LA1/2002 issued on behalf of the 1st respondent purporting to be under Section 15[2] of Tamil Nadu High Ways Act 2001 and to quash the said notice and to grant such relief or reliefs as deemed fit and proper in the facts and circumstances to the case and thus render Justice.

For Petitioner : Mr.R.Thiagarajan, Senior Counsel
for Mr.P.Rathinadurai

For Respondents: Mr.V.Ayyadurai, Addl. Advocate General
assisted by Mr.S.Diwakar,
Spl. Govt. Pleader

O R D E R

The petitioner seeks for issuance of a Writ of Certiorari to quash a notice issued by the 1st respondent in Form-A dated 22.07.2004 under Section 15[2] of the Tamil Nadu High Ways Act, 2001.

2. This Writ Petition was initially tagged along with W.P.No.39261 of 2003 and was disposed of by an order dated 21.02.2013, holding that the impugned notice is vitiated for the reason that the respondents have not followed the pre-requisites as mentioned in Section 8 of the Tamil Nadu High Ways Act, 2001 [hereinafter referred to as "the Act"] and that, no Award has been passed to pay compensation to the petitioner. Keeping in mind the importance of the acquisition for road widening, direction was issued to the respondents to grant in lieu of compensation, TDR benefit, failing which, the impugned notice would be quashed with liberty to the respondent to proceed afresh in terms of the Act by following Section 8 and 15 of the Act. As against the said order, the respondents preferred Writ Appeal in W.A.No.162 of 2014, which appeal was clubbed along with other connected matters and by a Common Judgment dated 28.01.2015, taking note of a notification issued by the respondent as published in the Government Gazette dated 22.10.2003, the order dated 21.02.2013 was set aside and the matter was remitted to the writ Court for being heard and decide afresh. This is how the Writ Petition is before this Court.

3. The facts which would be essential to consider the case of the petitioner is as follows:

The petitioner purchased an extent of about 48,000 sq.ft. in survey No.329 of Velacherry Village during 2003 and they have put up a multi-storeyed building therein, with a total built up area of about 1,30,000 sq.ft. of stilt plus eight floors in terms of the plan sanctioned by the Chennai Metropolitan Development Authority. The 1st respondent served a notice dated 20.10.2003, being a show cause notice under Section 15[2] of the Act. The notice stated that the Government of Tamil Nadu requires the land mentioned in the schedule therein for the purpose of formation of the inner ring road and the petitioner was granted liberty to show cause within 30 days as to why the land should not be acquired. The notice mentioned the name of the registered holders as M/s.Chelladurai and four others, partners of M/s.Standard Fire Works and the petitioner's name was mentioned as interested person. The petitioner submitted their objection on 14.11.2003 among other things, contending that the notice is without jurisdiction and vague and requested for copies of the proposal sent by the Highways Department, Public Works Department, Chennai Metropolitan Development Authority, etc. In the notice, the extent of land which was proposed to be acquired was 22½ cents in survey No.329 of

Velachery Village. The petitioner contended that no details were furnished, such as, width and length of the land proposed for acquisition. There upon the petitioner was permitted to peruse the required particulars in the office of the 2nd respondent, which opportunity was availed by the petitioner. Nevertheless, they stated that all records were not allowed to be perused and what was shown to them was only the combined sketch and land plan schedule prepared by the Divisional Engineer, Highways Department. At this stage, the petitioner approached this Court and filed W.P.No.37419 of 2003 for issuing a direction to furnish copies of the documents sought for by them. Writ Petition was disposed of by an order dated 17.02.2004 directing furnishing of copies of documents, which direction was complied with by the respondents.

4. The petitioner further contended that in terms of Section 8 of the Act, the "Highway Authority" has to fix the highway boundary line, building line or control line and thereafter, publish a draft notification containing the details of the land situated between the highway boundary line and control line proposed to be fixed, call for objections from all persons likely to be affected and after considering the objections, the "Highway Authority" concerned, with the approval of the State Highway Authority publish the final notification. The objection to the acquisition proceedings, apart from being on technical grounds is also opposed on the ground that if the proposed acquisition is proceeded with, substantial damage would be caused to the petitioner and a larger extent of the built up area will be rendered useless and it would be a severe dent on the project promoted by the petitioner in the said lands.

5. The petitioner had once again approached this Court and filed W.P.No.39261 of 2003 to quash the notice issued under Section 15[2] of the Act and the Writ Petition was admitted and an order of interim stay in respect of dispossession alone was granted, if the petitioner had not been dispossessed. In the meantime, another proceedings was issued on 16.12.2003 by the 2nd respondent stating that the petitioner's request to peruse further records cannot be complied with. This was challenged by the petitioner in W.P.No.4341 of 2004, in which, an order of interim stay of dispossession alone was granted on 27.02.2004. The petitioner has filed this Writ Petition challenging the impugned notice dated 22.07.2004 contending that the order dated 16.12.2003 has been passed by the 2nd respondent and in spite of representations being made, the same were not considered by the 1st respondent apart from being bad in law.

6. Mr.R.Thiagarajan, learned Senior Counsel for the petitioner referred to various provisions of the Act, namely, Sections 8[1], 8[2], 8[3], 15 and 16 and contended that the procedure required to be followed under Section 8[1] of the Act is a pre-requisite before proceeding under Section 15 of the

Act. It is submitted that the Highways Authority, which has been defined under Section 2[13] means the officer appointed under sub-section[2] of Section 5, who shall first fix the highway boundary line, building line, etc as stipulated in clause [a] to [c] in Section 8[1] of the Act and before publication of the notification under this sub-section, a draft notification of the said notification shall be published inviting objections if any, on the proposed fixation.

7. It is further submitted that Section 8[2] of the Act stipulates what should be the contents of such draft notification and the procedure to be followed after considering the representation is stipulated in sub-section 3 and only thereafter, a final notification can be issued. It is submitted that in the instant case, this procedure was not followed and therefore, the proceedings initiated under Section 15 of the Act is illegal and the entire proceedings stand vitiated.

8. The learned Senior counsel submitted that an identical issue was considered by this Court in the case of R.Moorthy and 28 Others Vs State of Tamil Nadu 2014 [2] CWC 763 and the Court held that the road must be first declared as a Highway, then the markings have to be made and notification has to be published as contemplated under Section 8 and upon receipt of the objections, the Highway Authority has to conduct an enquiry and decide on the extent and alignment and only thereafter, a notification under Section 15[2] of the Act can be published calling for objections. It is submitted that on account of the fact that this mandatory procedure was not followed in the case of R.Moorthy [supra], the said Writ Petition was allowed and the acquisition was quashed. It is further submitted that after the decision was rendered by this Court, the respondent therein by way of implementing the Judgment, have issued a notification and published in the Tamil Daily Dinamani, Madurai edition on 26.12.2014. Therefore, the learned Senior Counsel submitted that the issue involved in this Writ Petition is squarely covered by the decision in R.Moorthy.

9. The ancillary submissions are that the alignment of the road has been shifted towards the eastern side on account of the fact that the lands on the western side of the road which were declared as surplus under the provisions of Tamil Nadu Urban Land Ceiling Act were encroached by private parties and apartment complex had been constructed in the said lands and for that reason, the petitioner cannot be penalised and their lands cannot be acquired. Referring to the order passed in W.P.No.759 of 2007 filed by the said encroachers, it is submitted that the said Writ Petition was dismissed by an order dated 14.03.2013, wherein, the Court recorded a finding that the lands on acquisition vested with the Government and merely because the encroachers managed to obtain patta and building approval, that by itself will not have the effect of taking away the title

vested with the Government. Therefore, it is submitted that the lands which were to be utilised lying of the western side was a land vested with the Government and that was allowed to be encroached and the action of the respondents is malafide in proposing to acquire the petitioner's lands. In this regard, it is submitted that the first objection that the respondent may raise, when a plea of malafide is alleged by contending that the party against whom allegations of malafide had been made, have not been impleaded in the Writ Petition in their personal capacity. Relying on decision of the Hon'ble Supreme Court in State of Punjab Vs Ramjilal and Others 1970[3] SCC 602, it is submitted that there is no such requirement.

10. It is submitted that the law on the subject has been laid down in the case of R.Moorthy [supra] and the judgment has been implemented by the respondent therein and that being the law laid down by the jurisdictional High Court of the respondents, it is binding on the respondent. To support such contention, reference was made to the Judgment of the Hon'ble Supreme Court in M/s.East India Commercial Co. Ltd., Calcutta and Another Vs Collector of Customs, Calcutta AIR 1962 Supreme Court 1893 in paragraph No.29, wherein it was held that the law declared by the highest court in the state is binding on authorities or Tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding.

11. Mr.V.Ayyadurai, learned Additional Advocate General assisted by Mr.S.Diwakar, learned Special Government Pleader before going into the aspect as to the effect of the Judgment in the case of R.Moorthy referred to the counter affidavit filed by the respondents stating that Velachery Tank is situated in Division No.153 of Chennai Corporation and the Tank is maintained by Public Works Department with registered ayacut of 962 acres and at present, the entire ayacut has become residential colonies. As most of the ayacut were converted as residential colonies, there is no defined surplus course and the weirs and three sluices were closed and subsequently, the full tank level of the tank was lowered by four and a new weir was constructed during 1986. During 1993, Velachery Residents' Welfare Association filed W.P.No.22053 of 1993 and this Court ordered the closure of the existing sluice No.4 and to construct a new sluice near the existing by-pass road to discharge the Velachery tank water through it and flow in to the existing field channel. Based on the Court order, sluice No.4 was closed and a new sluice was constructed near the Velachery by-pass road.

12. It is further submitted that during the formation of Velachery by-pass road, the existing field channel was used for road formation and whenever the tank surpluses through the weir and sluice, in the absence of defined channel, the surplus water

enters the residential colonies and get inundated. A Writ Petition came to be filed for construction of proper drainage and it was approved by the Government in 1997. However, during the course of execution, a Suit was filed in O.S.No.3776 of 1998 stating that compensation was not paid to the land owners by the Highways Department and due to the Court order, the work was not proceeded further. Subsequently, the Government has allotted Rs.300Crores in the year 1998 for flood alleviation and improvement of Storm Water Drainage system in Chennai and a Committee was constituted to sort out the issues relating to the flooding problem in Velachery and the said Committee recommended formation of drainage channel from Velachery tank to Pallikaranai swamp along the western end of the existing bypass road and Velachery-Tambaram road, the required land to be obtained from the Highways Department by acquisition. The channel work is said to have commenced during 2003 and due to delay in land acquisition process, the work was completed only up to 60% as of 2004.

13. Further, the learned Additional Advocate General sought to impress upon the Court with the above factual submissions and submitted that the impugned proceedings is only a show cause notice and the petitioner can raise all the objections by submitting a reply. Further, it is submitted that the 1st respondent is not required to comply with the procedure under Section 8 of the Act before proceeding under Section 15[2] of the Act and the stand taken by the writ petitioner in this regard is unsustainable and the respondents are supported by the decision of the Hon'ble Division Bench of this Court in the case of R.Kumar and Others Vs State of Tamil Nadu [2007] 2 MLJ 384 and the decision in Jayaraman and Other Vs State of Tamil Nadu [2014] 4 MLJ 685. It is submitted that in Jayaraman's case, the Court has taken great pains to examine the entire scheme of the Act and also thoroughly explained the ratio laid down by the Hon'ble Division Bench in R.Kumar's case and has held that notification under Section 8 of the Act is not a sine qua non for initiating acquisition proceedings under Section 15 of the Act. It is submitted that in R.Moorthy's case, this Court has not distinguished the decision in R.Kumar's case and Jayaraman's case and therefore, the law which has been laid down in R.Kumar's case and Jayaraman's case will hold the field, since the decision in Jayaraman's case was rendered following the decision of the Hon'ble Division Bench and by applying the same, the contentions raised in the Writ Petition are liable to be outrightly rejected.

14. Adding to the said submission, it is contended that though in R.Moorthy's case, there is reference to the decision in Jayaraman's case and R.Kumar's case what weighed in the mind of the Court was that minimum extent of land is to be acquired with a view not to cause much inconvenience to the land holder and the decision in R.Moorthy's case cannot be taken to be a

precedent. It is further submitted that the scheme of Storm Water Drainage and extension of drainage is of utmost importance and therefore, the authority should be permitted to proceed with the acquisition proceedings.

15. Heard Mr.R.Thiagarajan, learned Senior Counsel appearing for the petitioner and Mr.V.Ayyadurai, learned Additional Advocate General appearing for the respondents and carefully perused the materials placed on record.

16. The following issues would fall for consideration in this Writ Petition.

[1] Whether the contentions raised in this Writ Petition are covered by the decision in the case of R.Moorthy ?

[2] Whether the decisions in R.Moorthy and Jayaraman [supra] hold the field and does it cover the contentions raised by the petitioner ?

[3] Whether the proceedings initiated by the respondent are vitiated by malafides ?

17. Point Nos.1 and 2 : In R.Moorthy's case, batch of Writ Petitions were filed before the Madurai Bench of this Court contending that the provisions of the Act is repugnant to the Land Acquisition Act, 1894 and whether the provisions of the Act had been followed before issuing notification under Section 15 [2] of the Act therein, whether it is feasible to construct a road over bridge or road under bridge at the relevant place and the effect of the Land Acquisition Rehabilitation and Re-settlement Act, 2013 on the impugned land acquisition proceedings.

18. The Court took into consideration various decisions and it is an elaborated order and for the purpose of this case, it would suffice to note that the decisions in the case of Jayaraman as well as R.Kumar have been noted and referred to. Before this Court considers the effect of decision in R.Moorthy on this Writ Petition, it would be necessary to see the legal position which has been enunciated in R.Kumar's case, followed and explained in Jayaraman's case. In R.Kumar's case, the challenge was to a notification issued under Section 15[1] of the Act on several grounds and while testing the correctness of the impugned notification, it was held that once it is a Highway, the Highway Authority can fix the boundary line and control line for such Highway. Ultimately, it was held that the impugned notification would not amount to variation of the declared master plan under the Town and Country Planning Act, 1971.

19. In Jayaraman's case, a notification issued under Section 15[2] of the Act was put to challenge on similar grounds as raised in this Writ Petition, namely, without following

mandatory requirement under Section 8 of the Act, acquisition cannot be proceeded under Section 15 of the Act. The Court took into consideration the entire factual position as well as the earlier decisions and explained the decisions of the Hon'ble Division Bench in R.Kumar's case on the following lines:

"29. It could be seen that in R.Kumar's case, though a specific argument has been advanced by the petitioner therein, that unless a notification is issued under Section 8 of the Tamilnadu Highways Act, 2001, acquisition, by issuing a notice under Section 15(1) of the Act cannot be made, the said argument, has been negated by the Hon'ble Division Bench.

35. From the reading of the entire Act, it could be seen that the Tamil Nadu Highways Act, 2001, has been enacted, not only for declaration of certain highways, to be state highways, restriction of ribbon development along such highways, prevention and removal of encroachment thereon, but also enacted for construction, maintenance and development of highways, as well as levy of betterment charges and for matters connected therewith or incidental thereto. For the purpose of construction, maintenance or development of such highways, the Collector or any other officer, specifically appointed by the Government, can perform the functions of the Collector, under the Tamil Nadu State Highways Act, 2001. Appointment of Highways Authority, has been specifically mentioned in Section 5 of the Act.

36. Section 15 of the Act, starts with the opening sentence, "If the Government are satisfied that any land is required for the purpose of any highway or for construction of bridges, culverts, causeways or other structures thereon, or for any purpose incidental or ancillary thereto, in furtherance of the objects of this Act," The Act cannot be read and interpreted to mean that it does not empower, the Government or the competent authority to acquire lands, for construction of a highways or for widening of any road, unless and until, a road has been declared as Highways, under Section 3 of the Act. The Act manifestly states that for the purpose of construction, maintenance or development of any highway lands can be acquired. The Act provides for construction of a highway. It provides for maintenance. An existing road can also be declared as State Highways, and developed. For the purpose of construction of a highway, maintenance, development, and in sum and substance, for the purpose of giving effect to the Act, all acts can be done by the

competent authorities, which includes acquisition of lands also.

37. The contention of the petitioner is something like, "putting the cart before the Horse". The expression in Section 15 of the Act, "For the purpose of any highway", should be read, along with other Sections of the Act. In view of the detailed discussion and decision in R.Kumar's case, I am of the view that the issue is no more res integra. However, the same issue has been once again raised in CeeDeeYes's case,* and held in favour of the land owners. The relevant discussion and decision in the judgment of the Hon'ble Mr. Justice A.Kulasekaran, in W.P.No.18050 and 18051 of 2005, dated 09.08.2006 and confirmed by the Hon'ble Division Bench, in R.Kumar and others Vs. State of Tamilnadu, rep. by its Secretary to Government, Highways Department, Fort St.George and others reported in 2006 (4) CTC 640, have not been highlighted by the respondents in CeeDeeYes's case.

* This is the earlier order in the present writ petition which was set aside and remanded for fresh consideration.

41. Section 3 of the Act, enables the Government or the competent authority, by notification, to declare any road, way or land to be highway and classify the same, as State Highway, District Road, Major District Road, Other District Road, and Village Road. The Act does not prohibit, the Government or the Highways authorities, from acquiring any land, for the purpose of construction of any road, which may be declared as a highways, under Section 3 of the Act. Declaration of a road as Highways, is different from acquisition of lands for construction, maintenance and development of a road, under the Tamilnadu Highways Act. For construction i.e., to form a road, acquisition of land, is required to be done. Declaration or classifying any road, as (1) State Highway; (2) District Road; (3) Major District Road; (4) Other District Road; and (5) Village Road, is a different act, to be done by the Government and it has nothing to do with acquisition of land, for formation or construction.

42. The contention of the petitioner is that the Government, should first declare a road, as highways, under Section 3 of the Act and only thereafter, form or construct a road. Lands can be acquired by the Government, for formation of a road, ie., construction of the road, maintenance and development and simultaneously, the Government, may declare that the

road intended to be formed, is a (1) State Highway or (2) District Road or (3) Major District Road or (4) Other District Road or (5) Village Road. When the Government is empowered to acquire the lands, for formation of a road or construction of a road and such road may also be declared as (1) State Highway; (2) District Road; (3) Major District Road; (4) Other District Road; and (5) Village Road. The petitioners have no right to question the authority of the Government. Declaration of any road as highways, is not a sine qua non or it should be anterior to acquisition, for the said purpose. If the power of Government, under "eminent domain" is restricted to mean that, acquisition of lands cannot be done, unless, a road is declared as a Highways, under Section 3 of the Act, then in my humble opinion, it is an untenable argument. Considering the object of the Act, and the provisions of the Act, such a narrow construction would defeat the very purpose and object of the Act, which is intended to be enforced, for construction, maintenance, development, classification and for such other incidental activities, to be carried on, by the Government and the State Highways Authorities. Such a narrow construction would be an infringement to Section 15 of the Act.

43. If the contentions of the petitioners are to be accepted, then there is no meaning in using the words, "construction, maintenance and development of a road" with reference to the object, for which, the Act has been enacted. Sections 3 and 15 of the Act, operate separately. Section 15 is not dependent on Section 3 of the Act. The Act envisages and empowers the State Highway Authorities, to acquire lands for construction or formation of a road, which may be declared as a State Highway. Powers exercised under Section 3 of the Act, to declare the road, as (1) State Highway; (2) District Road; (3) Major District Road; (4) Other District Road; and (5) Village Road, is independent of Section 15 of the Act.

44. In exercise of powers of eminent domain, the State Government or the competent authority under the Act, can initiate proceedings for acquisition of lands, for formation or construction of a road. The expression, "construction, maintenance and development of a road" cannot be circumscribed and given effect, only to the existing roads, or the roads, already declared as Highways." [emphasis applied]

20. Thus, Jayaraman's case sets out the legal position and has explained the decision in R.Kumar on the above lines and undoubtedly, a decision rendered relying on and adopting the

legal principles enunciated by the Hon'ble Division Bench would bind this Court. Yet the contention raised by the learned Senior Counsel for the petitioner is that, in R.Moorthy's case, the decisions in R.Kumar and Jayaraman were considered and the Court rendered a finding that it is mandatory for the respondents to first follow the procedure under Section 8 of the Act and only thereafter, proceed to Section 15 of the Act. To test the correctness of this submission, this Court has gone through the decision in R.Moorthy, which as pointed out earlier is a very detailed and elaborate order. It may not be necessary to refer to all the aspects dealt with in the judgment and it would suffice to confine only to the aspect as to how the decisions of R.Kumar and Jayaraman were dealt with whether the Court has distinguished the judgment. The following paragraphs of the order would be relevant.

"147. ... The purpose of issuing a notification is to enable the highways authority to decide whether to continue the development or construction or drop it or to continue with the existing marking or make a different marking. While deciding the marking, the authorities would certainly have to consider various aspects like exact extent of land required, involvement of cost in acquisition, construction and duration. Nevertheless, it is always favourable if minimum extent is acquired. Considering the above peculiar facts, this court is of the view that the judgment in Jayaraman v. State of Tamil Nadu reported in 2014 (1) CWC 635, cannot be applied to the present case.

158. ... It is pertinent to mention here when the provisions regarding the procedure were included, it is to ensure less cost and minimum acquisition. ... The right to acquire the lands for public purpose is an exemption to the constitutional right. The State indisputably has the right to acquire any land for public purpose. But, it must always ensure that only the required land is acquired. When the same is sought to be deprived, the State must act strictly in accordance with the provisions of the Act. The State must bear in mind that any deviation therefrom would vitiate the entire proceedings.

21. On a reading of the above, it is evidently clear that the Court did not distinguish the decision in Jayaraman. But the observation is that the decision cannot be applied to the facts of the case relating to R.Moorthy. The reason that can be culled out from reading of the above mentioned paragraphs and other relevant paragraphs of the order is that the Court was of the firm opinion that the minimum extent of land alone has to be acquired, viewed from the point of view of the land owner as well as the requisitioning body. This appears to have weighed in the minds of the Court as there are observations in paragraph

No.151 to the effect that it is always favourable, if minimum extent is required. Thus, the decision in R.Moorthy cannot be taken as a decision which has distinguished Jayaraman. It is to be noted that Jayarman was rendered by referring to and relying upon a Hon'ble Division Bench Judgment in R.Kumar. Therefore, cogent reasoning was required to distinguish the decision of the Hon'ble Division Bench as well as in Jayaraman.

22. Admittedly, the Court in R.Moorthy's case did not make any such endeavour as the Court was of the view that on facts, it would not be applicable. The decision in Jayaraman lays down the legal position that the procedure under Section 8 of the Act is not a pre-requisite for commencing acquisition proceedings under Chapter IV of the Act commencing from Section 15. In other words, the order is to the effect that Chapter IV of the Act is a "watertight compartment" and not dependent upon procedure under Section 8 of the Act. In that context, it was observed that declaration of any road as Highway is not a sine qua non, it should be anterior to acquisition for the said purpose. If the power of the Government, under eminent domain is restricted to mean that, acquisition of lands cannot be done, unless, a road is declared as a Highways under Section 3 of the Act, it would be an untenable argument. Considering the object of the Act and the provisions of the Act, such a narrow construction would defeat the very purpose and object of the Act, which is intended to be enforced, for construction, maintenance, development, classification and such other incidental activities, to be carried on, by the Government and the State Highways Authorities. Such a narrow construction would be an infringement to Section 15 of the Act.

23. It could be seen from paragraph No.29 of the order in Jayaraman, that the Court pointed out that in R.Kumar's case, though a specific argument has been advanced by the petitioner therein, that unless a notification is issued under Section 8 of the Act, acquisition by issuing notice under Section 15[1] of the Act cannot be made, the said argument has been negatived by the Hon'ble Division Bench.

24. In the light of the above, this Court has no hesitation to hold that the correct legal position has been spelt out in Jayaraman's case following R.Kumar's case. In R.Moorthy's case, the Court has not distinguished the aforementioned two decisions and had made an observation that it would not apply to the facts of the said case and therefore, it is not a case either distinguishing or differing with the findings rendered in Jayaraman's case and therefore, in the considered view of this Court, the correct legal position to be adopted is to apply the decision in Jayaraman's case. Accordingly, issue Nos.1 and 2 are answered against the petitioner and in favour of the respondents.

25. This leaves us with only one issue pertaining to the plea of malafide. Admittedly, the plea of malafide is not against a particular individual, but it is stated that the Government did not take any steps to prevent encroachment of Government land in the western side and having allowed the encroachers to construct thereon, after obtaining patta, have shifted the alignment towards eastern side and proposed to acquire petitioner's land.

26. From the averments as set out in the counter affidavit and the factual details placed by the learned Additional Advocate General, this Court sees no malafides in the action of the authorities. But, what is shocking to note is that the entire Velachery area and more particularly, where the petitioner has put up construction was an ayacut and it was fed by the Velachery tank. The ayacut were converted into residential colonies. Indiscriminate development has been done in utter disregard to rule of law and impact on environment and the price is being paid by the innocent buyers who had invested their hard earned money, oblivious of the fact that the apartment complexes and houses had been constructed in ayacut or inside a tank. The counter affidavit states the truth and the exact reason for inundation. In spite of the recent deluge, the city of Chennai faced during December 2015, it appears to have not taught a lesson to either the authorities or the urban planners or promoters or the people who seek to invest on housing. It is high time that better sense should prevail on all stake holders.

For all the above reasons, the Writ Petition fails and dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gya

To

1 THE DISTRICT COLLECTOR OF CHENNAI,
RAJAJI SALAI, CHENNAI-1.

2 THE SPECIAL TAHSILDAR (LA),
HIGHWAYS, MAMBALAM-GUINDY TALUK,
TALUK OFFICE COMPLEX,
ASHOK NAGAR, CHENNAI-78.

3 THE COMMISSIONER (ULC),
ALANDUR, CHENNAI-16.

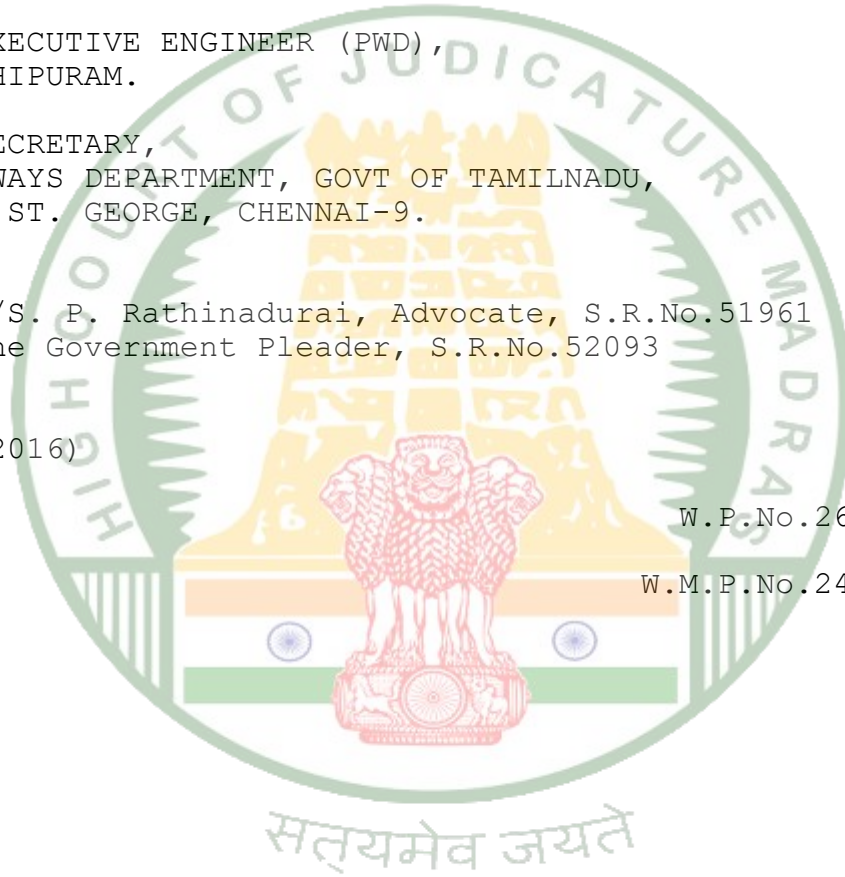
4 THE EXECUTIVE ENGINEER (PWD),
KANCHIPURAM.

5 THE SECRETARY,
HIGHWAYS DEPARTMENT, GOVT OF TAMILNADU,
FORT ST. GEORGE, CHENNAI-9.

+1cc to M/S. P. Rathinadurai, Advocate, S.R.No.51961
+1cc to the Government Pleader, S.R.No.52093

MP1 (CO)
EU(26/09/2016)

W.P.No.26794 of 2004
and
W.M.P.No.24031 of 2016



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