



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:10.06.2016

CORAM:

WEB COPY

THE HONOURABLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

W.A.(MD)Nos.929 and 930 of 2016

and

C.M.P(MD)Nos.5515 and 5516 of 2016

M.Kamila ... Appellant in W.A.(MD).No.929/2016
G.S.F.Shaik Ahamed Kabeer ... Appellant in W.A.(MD).No.930/2016

Vs.

1)The Government of India,
rep.by its Secretary,
Ministry of Road Transport and Highways,
Transport Bhavan,
No.1, Parliament Street,
New Delhi.

2)The District Collector,
Kanyakumari District,
Kanyakumari.

3)The Competent Authority cum
Special District Revenue Officer,
Land Acquisition,
Kerala-Tamil Nadu-Kanyakumari,
National Highway Project (NH 47&47-B),
Office of the District Collector,
Kanyakumari District.

4)The Project Director,
National Highways Authority of India,
Tirunelveli Region,
Tirunelveli District.

... Respondents in both W.As.

Appeals filed under Clause 15 of the Letter Patent, against the order dated 20.11.2015 passed in W.P(MD)Nos.7285 and 9792 of 2014 respectively.

Prayer in WP(MD). 7285/ 2014 :

<https://hcservices.ecourts.gov.in/hcservices/> Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari and Mandamus, calling for records relating the Impugned



notifications issued by the 1st respondent in S.O. 399 (E) - Ministry of Road Transport and Highways, dated 16.02.2010 and the notification issued by the 1st respondent in Na.Ka. No. J 3/613/2009 dated 21.07.2011 and the consequential order made by the 3rd respondent in his proceedings in Na.Ka. J 4/3/2010 dated 08.07.2010 and quash the same as illegal and consequently forbear the respondents from in any way dispossessing or depriving the petitioner of her lands in Survey NO. 24/1 & 24/11-A Eravi Puthoor Village, Agastheeswaram Taluk, Kanyakumari District.

Prayer in WP(MD). 9792/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARI MANDAMUS calling for records relating the impugned notifications issued by the 1st respondent in S.O.399 (E) - Ministry of Road Transport and Highways, dated 16.02.2010 and the notification issued by the 1st respondent in ROC.No.J3/613/2009 dated 21.07.2011 and quash the same illegal and consequently forebear the respondents from in any way dispossessing or depriving the petitioner of his lands in Survey No.61/2, Eravi Puthoor Village, Agasteeswaram Taluk, Kanyakumari District.

For Appellants : Mr.M.Ajmalkhan,
(In both W.As) Senior Counsel for M/s. Ajmal Associates

For Respondents : Mr.B.Pugalendhi,
(In both W.As) Special Government Pleader

COMMON JUDGMENT

(Judgment of the Court was delivered by **The Hon'ble The Chief Justice**)

Connectivity of our country through national highways is a priority which cannot be doubted. This is the reason that in the wisdom of the Legislature a specific enactment has been provided for acquisition of lands for such national highways by the National Highways Act, 1956.

2.We find that this very objective has in fact been defeated in the present case by a prolongation of almost six years during which time, the cost of the project would have gone up by leaps and bounds.

3.The high way in question is "National Highway No.47 on the stretch of land from Km 43/000 to Km 96/714 (project chainage) (Kerala/Tamil Nadu Border to Kanniyakumari Section)". The notification qua the acquisition of lands with the object of widening/four-laning of the highways was issued under Section 3 A of the said Act, on 16.02.2010. It was published in the official gazette on 16.02.2010 and in the local newspaper, including one of

vernacular language, on 20.03.2010. In order to keep in mind the content of the scheme of acquisition under the said Act, we reproduce the relevant provision as under:-

"3-A. Power to acquire land, etc.-(1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.

.....

3-C Hearing of objections.-(1) Any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation.-For the purposes of this sub-section, "legal practitioner" has the same meaning as in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961).

(3) Any order made by the competent authority under sub-section (2) shall be final.

3-D. Declaration of acquisition.-(1) Where no objection under sub-section (1) of section 3-C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purpose mentioned in sub-section (1) of section 3-A.

(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under subsection (1) of section 3-A for



its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect.

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 3-A is stayed by an order of a Court, shall be executed.

(4)A declaration made by the Central Government under sub section (1) shall not be called in question in any Court or by any other authority".

4. On the notification being issued as aforesaid, it is undisputed that the appellants before us filed their objections under Section 3-C. Hearing was given. Objections were considered. But the same were rejected.

5. The declaration in the Official Gazette for acquisition of the land under Section 3-D was issued on 07.02.2011 which in turn was published in the newspapers on 21.07.2011. Notices for taking over the possession under Section 3-E of the Act were issued on 16.10.2015.

6. The endeavour of the appellants to challenge the said notification resulted in interim stay, which continued and finally the writ petitions have been dismissed, as per the impugned order dated 20.11.2015 of the learned single Judge along with the other connected writ petitions.

7. The learned Senior Counsel for the appellants, as before the learned single Judge, seeks to make three fold submissions before us:-

The first, if one may say so the crucial submission, relates to how the provisions of Section 3-D have to be read along with Section 3-A of the said Act. The submission is that the declaration issued under Section 3-D(1) of the said Act has to be made within a period of one year from the date of notification under Section 3-A (1) of the said Act. But simultaneously the publication of the declaration under section 3-D(1) should also be within that stipulated period of one year. Since the 3-D(1) declaration was published in the Official Gazette, admittedly, within the period of one year from the date of publication of the notification under Section 3-A(1) of the said Act in the Official Gazette and the publication of declaration under Section 3-D(1) in newspapers was beyond the period of one year, it was submitted that the notifications issued under Section 3-A(1) of the said Act are no more good in law nor would survive.

8. We have gone through the aforesaid provisions and heard the submissions of the learned Senior Counsel.

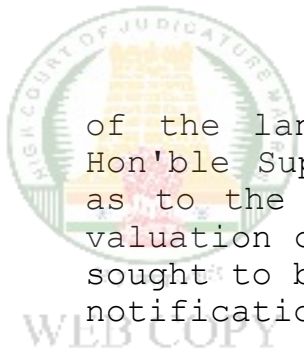


9. We are unable to agree with the submissions by being in agreement with the view adopted by the learned single Judge. We may notice that the requirement of Section 3-A (1) of the said Act is for publication of the notification in the Official Gazette. Sub-section (3) of Section 3-A further provides that the substance of the notification is to be published in two local newspapers, one of which will be in vernacular language. Thus, a twin requirement is provided. However, the requirement as per Section 3-D (1) of the said Act prescribes only the publication of the declaration for acquisition in the Official Gazette. There is no such stipulation qua publication in the newspaper, as in the case of sub-section (3) of Section 3-A of the said Act. Learned Senior Counsel, in fact, seeks to read into sub-section (2) of Section 3-D of the said Act, a stipulation which is actually under sub-section (3) of sub-section 3-A of the said Act, which plea cannot be accepted. If the intent was to have an identical situation under Section 3-D of the said Act, the Legislature would have provided so, as they did it in the case of sub-section (3) of Section 3-A of the said Act. Sub-section (2) of Section 3-D of the said Act only refers to the publication of declaration under sub-section (1). The requirement of sub-section (1) of Section 3-D of the Act is the only requirement to be made which is only publication in the Official Gazette. The fact that this was also published in the newspapers is another matter. But the mandatory requirement is not to have the publication within one year in newspapers. Such declaration under Section 3-D (1) of the said Act with respect to the notification under Section 3-A (1) of the said Act, the period of limitation would thus start from the publication in the Official Gazette of the notification under Section 3-A of the said Act and end with the publication in the Official Gazette of the acquisition under Section 3-D (1) of the said Act. The intent is also quite obvious. In case of Section 3-A of the said Act, the object is to have a widest possible circulation, so that everybody comes to know of the intent of the Government to acquire the lands. So that all the affected persons could file their objections but the declaration under section of the 3-D of the said Act really relates only to such people who have come forward to file their objections.

10. We thus reject the aforesaid submission.

11. The second aspect urged by the learned Senior Counsel is about the vagueness of the notification issued under Section 3-A(1) of the said Act. It is his say that there was no description of the part of the land of the appellants sought to be acquired which would cause confusion. In this behalf, learned Senior Counsel draws strength from the judgment of the Hon'ble Supreme Court in **Competent Authority Vs. Barangore Jute Factory, 2005 (13) SCC 477**, more specifically paragraph nos. 4 and 5.

12. On reading of the aforesaid judgment, it is clear that the factual situation there was a small part out of a larger tract



of the land was sought to be acquired and in that context, the Hon'ble Supreme Court has observed that there should be certainty as to the description of the land sought to be acquired, as the valuation of the land may vary depending on where the tract of land, sought to be acquired, is located. Thus, in that context, the notification was held to suffer from vagueness.

13. In the present case, there is no possibility of any doubt in the minds of the appellants/owners, for the simple reason that it is the existing highway which is sought to be widened by making it a four lane highway. Thus, the land proposed to be acquired is adjacent to the existing highway. It is not a case as referred to the aforesaid judgment of the Hon'ble Supreme Court, where it is difficult to decide whether the land has been proposed to be acquired in north, south, east or west. We may also notice despite vagueness in the notification in the case before the Supreme Court, it was not quashed though the effect was on the value of compensation. We are, thus unable to find that in the given facts of the case in the aforesaid judgement can be of any help to the learned Senior Counsel.

14. The third and the last aspect pleaded by the learned Senior Counsel is that there is lack of proper reasoning. We may notice that there could hardly be any elaborate reasoning to a simple exercise of widening the existing highway. The learned Single Judge, in paragraph 19 of the order, has in fact noticed that the judgment of the Hon'ble Supreme Court in **Union of India vs. Kuzhala Shetty (2011) 12 SCC 69**, to conclude that development and maintenance of national highways being a priority any private interest must give way to such larger interest.

15. We may, however, note that the learned Senior Counsel for the appellants pointed out that when the information about the plan was sought for by the appellants, the respondents denied the same. This was under the Right to Information Act, vide application dated 05.10.2013 and a reply, vide letter dated 31.10.2013. We fail to appreciate this approach, as doubts, if any in the minds of the appellants would have been dispelled, if there had been a positive approach and proper information could have been given and possibly, it would have reduced the length of the litigation which is costly for the national highways development.

16. We thus, find no merit in the appeals. Accordingly, the writ appeals are dismissed. No costs. Consequently, C.M.P (MD) Nos. 5515 and 5516 of 2016 are closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/



To

1) The Secretary,
The Government of India,
Ministry of Road Transport and Highways,
Transport Bhavan,
No.1, Parliament Street,
New Delhi.

2) The District Collector,
Kanyakumari District,
Kanyakumari.

3) The Competent Authority cum
Special District Revenue Officer,
Land Acquisition,
Kerala-Tamil Nadu-Kanyakumari,
National Highway Project (NH 47&47-B),
Office of the District Collector,
Kanyakumari District.

4) The Project Director,
National Highways Authority of India,
Tirunelveli Region,
Tirunelveli District.

+ 2 CC TO M/S.AJMAL ASSOCIATES, IN SR No. 29702, 29703
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 29785

SMS/SSM

TE/AAL-MPA/SAR-III : 06/07/2016 : 8P/8C

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