

THE HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

WRIT PETITION No.27284 of 2015

ORDER:

All the petitioners question the notifications issued under Section 3A and 3D of the National Highways Act, 1956 (for short, "the Act"), dated 12.11.2014 and 27.5.2015, respectively.

2. The notification, dated 12.11.2014, under Section 3A of the Act was issued for widening/two laning with paved shoulders etc., maintenance, management and operation of National Highway No.NH-222 (New NH-61) in the stretch of land from KM 615 to KM 668.600 (Maharashtra/Telangana border to Nirmal Section) in the district of Adilabad, Telangana State. The said notification was published in the Gazette of India Extraordinary Part II on 12.11.2014 and substance thereof was published in Andhra Prabha, Nizamabad Edition on 2.12.2014 and Deccan Chronicle (Karimnagar Edition) on 3.12.2014. The petitioners herein, whose lands are affected by the said notification, filed objections before the Additional Joint Collector, Adilabad – respondent No.3, who is the competent authority, objecting to the said proposal. The said competent authority admittedly received the objections, but according to the petitioners, no notice was issued for hearing of the objections and later, they came to know about the notification, dated 27.5.2015, issued under Section 3D of the Act. The petitioners, therefore, question both the notifications *inter alia* contending that the notification issued under Section 3D of the Act is in any way liable to be struck off as it is contrary to Section 3C of the Act as there was no opportunity of hearing and there was no consideration of the objections of the petitioners. The statement in the said notification issued under Section 3D of the Act that the objections have been received and the same have been considered and disallowed by the competent authority is seriously disputed. The petitioners also allege that on the objections filed by them, the competent authority

called for the remarks from the requisition authority and in the said remarks under Ex.P-1, dated 20.1.2015, the requisition authority advised the competent authority to reject the objections as the change of alignment cannot be considered and requested to issue notification under Section 3D of the Act. Apparently, the notification under Section 3D of the Act was issued by the National Highway Authority on 27.5.2015 on the basis of the report of the competent authority.

3. When this writ petition came up for admission on 1.9.2015, this Court directed the name of the learned Standing Counsel for National Highways to be printed. However, on 2.9.2015, it was reported by the learned Standing Counsel that they are no way concerned and it is only the R & B Department, which is required to answer the claim of the writ petitioners. Consequently, learned Government Pleader for R & B Department took time to get instructions. However, after considering the *prima facie* case, while issuing notice before admission, interim stay of all further proceedings was granted. Thereafter, counters were filed by respondent Nos.2 and 5.

4. In view of the urgency expressed, I have heard both sides.

5. The petitioners have filed a reply affidavit denying the said averments.

6. As mentioned above, the primary contention raised by the learned counsel for the petitioners is with regard to violation of Section 3(C)(2) of the Act which mandates that the objector shall be given an opportunity of hearing either in person or by a legal practitioner and after hearing the objections and making such further enquiry, the competent authority may either allow or disallow the objections.

7. The proceedings of the competent authority, dated 14.2.2015,

show that the change of alignment of the road from KM.624/850 to 626/300 of NH-222 with link road (outer ring road) is not possible. Since it was not clear as to when the petitioners were heard by the competent authority, learned Government Pleader for Land Acquisition was directed to produce the records. Accordingly, learned Government Pleader has placed the records before the Court i.e., the order passed by the competent authority on 14.2.2015 where under it has considered the objections of the petitioners and disallowed the objection petition. The copy of the said order is sent to the petitioners through the Tahsildar. However, a reading of the order does not show that the petitioners were given any opportunity of hearing on their objections. The said order refers to objections of the petitioners dated 2.12.2014, remarks of the requisition authority, dated 20.1.2015, and the report of the Tahsildar, dated 22.1.2014. While this Court is, for the present, not concerned with the merits of the claim of the petitioners vis-à-vis the findings of the competent authority on merits of the objections since the contention of the petitioners is confined to violation of Section 3(C)(2) of the Act, it is clear and apparent from the aforesaid order of the competent authority, dated 14.2.2015, that the objectors were not given any opportunity of hearing and the objections have been rejected merely on the basis of the report of the requisition authority. In fairness of things, the requisition authorities' remarks also are required to be given so that they can make an appropriate submission thereof at the time of hearing of the objections. However, in the present case, since the petitioners have already filed copy of the remarks of the requisition authority as Ex.P-1, the petitioners are aware of the remarks of the requisition authority and as such, if an opportunity of personal hearing is given to them, they can as well participate in the enquiry to substantiate their objections.

8. Since the provisions of the Act are exproprietary in nature, they have to be strictly construed and as I am satisfied that the provisions of

Section 3(C)(2) of the Act are violated, the Writ Petition deserves to be allowed and as a consequence thereof, the notification issued under Section 3D of the Act, dated 27.5.2015, insofar as the petitioners' affected lands are concerned is liable to be set aside.

9. Accordingly, the Writ Petition is allowed. This order, however, does not preclude respondent No.3 competent authority from giving notice to the petitioners and hearing them on the objections filed by them and then, pass appropriate further orders under Section 3(C)(2) of the Act and depending upon the nature of the order, the further proceedings in Section 3D of the Act may be taken accordingly by the appropriate authority. There shall be no order as to costs.

10. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE VILAS V.AFZULPURKAR

Date: 03.02.2016
AMD

THE HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

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