

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.12.2017

Delivered on : 21.12.2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.4269 of 2012

Pavai Varam Educational Trust,
rep. by its Chairman Mr.V.Natarajan .. Petitioner

versus

1. The District Collector,
Namakkal, Namakkal District.

2. The Special Tahsildar (Land Acquisition)-cum-
District Revenue Officer,
Namakkal, Rasipuram Bye-pass road,
1st Floor, Tashildar's Office,
Rasipuram-637 408. ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the second respondent in Na.Ka.proceedings No.11696/2008/H6 dated 17.8.2011, quash the same and direct the respondents to follow the procedure contemplated under Tamil Nadu Highways Act 2001 (Act 34/2002).

For Petitioner : Mr.V.Sninivasababu

For Respondents: Mr.S.Gunasekaran, AGP

ORDER

The petitioner has approached this Court, seeking the following relief:

"To issue Writ of Certiorarified Mandamus, to call for the records of the second respondent in N.Ka.proceedings No.11696/2008/H6 dated 17.8.2011, quash the same and direct the respondents to follow the procedure contemplated under Tamil Nadu Highways Act 2001 (Act 34/2002)."

2. The petitioner is a Trust, formed for imparting woman education in the State. The Trust had purchased lands measuring an extent of Acres 3.32 cents in S.No.57/2B, 57/1S and 57/2A at Anaipalayam village, Rasipuram, Sub Registrar Office, Namakkal District by registered sale deeds dated 14.12.2006 vide Doc.Nos.3693/2006 and 3694/2006 and covered under Patta No.99 issued by the Tahsildar, Rasipuram. The trust also purchased large extent of abutting land totalling 10.08 acres at Anaipalayam village, Rasipuram, Namakkal District. In the trust property, the petitioner had founded educational institution, called " Pavai Arts and Science College for Women" and after getting necessary approval from the authorities, the institution was established and had been successfully running the college.

3. While so, the second respondent issued a paper publication in Dinakaran Daily on 10.10.2010 proposing to acquire lands by the Tamil Nadu Highways Department for formation of Bye-pass road between Singalanathapuram and Ponkurichi, to avoid traffic congestion at Rasipuram town. The acquisition proceedings were initiated under the Tamil Nadu Highways Act, 2001 (hereinafter referred to 'the Act'). Initial notice was issued under Section 15(2) of the Act, calling for objections for the proposed acquisition from the petitioner trust.

4. In response to the proposed acquisition, detailed objections were submitted by the petitioner on 6.11.2010 and 20.11.2010 and the same were acknowledged by the second respondent on 22.11.2010. In their objections, the trust has contended that the proposed bye-pass alignment runs through the petitioner's college and also through the water catchment area, which will completely affect the water source resulting in contamination of water. It was contended that without affecting the water source, an alternative alignment is possible in the said area and in support of the same, two different alternative sketches of realignment of bye pass road were suggested by the petitioner trust and requested the respondents to consider the objections and to change the alignment in the larger public interest.

5. In spite of the legitimate objections raised by the petitioner, an inaugural function was scheduled on 17.2.2011 wherein, commencement of the project was announced. Therefore, the officials representing the respondents, started their work in the lands which were sought to be acquired. Therefore, the petitioner was constrained to file a writ petition in W.P.No.8574 of 2011 before this Court for issuance of a Writ of Mandamus, to forbear the respondents from interfering with the peaceful possession and enjoyment of the petitioner's land in S.F.No.57/2A2A, measuring an extent of 2400 sq.mts. In

Anaipalayam village, Rasipuram, Namakkal District, without resorting to the procedure contemplated under Tamil Nadu Highways Act, 2001.

6. While admitting the above writ petition, this Court has granted interim injunction on 5.2.2011, restraining the respondents from proceeding with their action. Thereafter, this Court passed a final order on 11.4.2011 on the basis of the submissions made on behalf of the Government. Relevant portion of the order as found in paragraphs 2 and 3, is extracted as under:

"2. Mr.P.Wilson, learned Additional Advocate General appears for the respondents and states that the apprehension expressed by the petitioner is incorrect as the authority will proceed purely in accordance with the provisions of the Tamil Nadu State Highways Act, particularly, the procedure prescribed thereunder. He also shows the various provisions of the Tamil Nadu Highways Act, which provides for proper hearing before proceeding further.

"3. Recording the above submission made by the learned Additional Advocate General, the respondents are directed to comply with the provisions of the Tamil Nadu Highways Act, before proceedings for any action acquiring the land for the purpose of expansion of the road."

7. In pursuance thereof, the second respondent by his proceedings dated 17.8.2011, rejected the petitioner's objections dated 6.11.2010 and 20.11.2010 by a non-speaking order. The said order is put to challenge in the present writ petition.

8. At the outset, Mr.V.Srinivasa Babu, learned counsel appearing for the petitioner would submit that the acquisition proceedings initiated in respect of the petitioner's lands, are unsustainable in law for more than one reason, viz., that the authorities have failed to follow the detailed procedure contemplated under Section 15 of the Act read with Rule 5 of Tamil Nadu Highways Rules, wherein, a detailed procedure was mandated and the authorities have given a complete go bye to the procedure by passing a non-speaking order on 17.8.2011. In fact, according to the learned counsel for the petitioner, the impugned order was passed in violation of undertaking given by the learned senior counsel appearing on behalf of the Government in the earlier writ proceedings which were recorded and writ petition was disposed of on the basis of the submissions of the learned senior counsel.

9. Learned counsel for the petitioner would draw the attention of this Court to the impugned order passed by the second respondent. The principal grounds of attack by the learned counsel for the petitioner, are two fold. Firstly, the order passed by the second respondent suffers from want of jurisdiction since he is not the competent authority to pass orders under Rule 5 of the Tamil Nadu Highways Rules, 2003 at the relevant point of time. Secondly, the order is a non-speaking one and therefore, the same cannot be construed to be in compliance with the procedure contemplated under Section 15 of the Act read with Rule 5 of the Tamil Nadu Highways Rules, 2003. Meaning that no proper enquiry was conducted and the impugned order itself disclosed non application of mind. According to the learned counsel, there cannot be a better example of non-speaking order than what is impugned in the writ petition. When the authorities vested with the power to pass orders dealing with the rights of the property of the citizens, that power cannot be exercised with a cavalier fashion with casual approach, resulting in negation of constitutional right of the citizens concerned.

10. Section 15 of the Act deals with the power to acquire lands, which is extracted herein below:

"15. Power to acquire land. (1) 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, they may acquire such land by publishing in the Tamil Nadu Government Gazettee a notice specifying the description of such land and the particular purpose for which such land is required.

(2) Before publishing a notice under sub-section (1), the Government shall call upon the owner and any other person having interest in such land to show cause within such time as may be specified in the notice, why the land should not be acquired. The Government shall also cause a public notice to be given in such manner as may be prescribed.

(3) The Government may, after considering the cause, if any shown by the owner or other person having interest on such land, pass such an order under sub-section (1), as they may deem fit."

Further, an enquiry was also contemplated after issuing notice to the owner or any other person having interest in the land.

Rule 5 of the Tamil Nadu Highways Rules provides for a detailed procedure to be followed while conducting the enquiry. The said Rule is extracted as under:

"5. Manner of publication of the public notice:

Before publishing a notice under sub-section (1) of [section 15](#), the Government or the Collector, as the case may be shall in addition to calling upon the owner and any other person having interest in the land to show cause as to why the land should not be acquired, shall also cause a public notice to that effect to be published in one English and in one Tamil news papers having circulation in the locality. The said notice shall also be displayed in the offices of the

- i) Highways authority of the division concerned
- ii) Village Administrative Officer of the village concerned; and
- iii) Tahsildar of the Taluk concerned;

(2) If any objections are received from a person interested in the land within the time prescribed in the public notice issued under sub-section (2) of [Section 15](#), the Government or the Collector, as the case may be shall fix a date of hearing the objections and give notice thereof to the objector as well as to the Highways Department. Copies of the objections shall also be forwarded to the Highways Department. The Highways Department may file, on or before the date fixed by the Government or the Collector, as the case may be a statement by way of answer to the objections and may also depute a representative to attend the enquiry.

(3) On the date fixed for enquiry or any other date to which the enquiry may be adjourned, the Government or the Collector as the case may be shall hear the objector or a person authorized by him in this behalf and the representative, if any of the Highways Department and record any evidence that may be produced by both in support of the objection and in support of the need for acquiring the land.

(4) Where the enquiry is conducted by the Collector, on completion of the enquiry, the Collector shall submit all the details of the enquiry to the Government, enabling the Government to pass order under sub-section (3) of [Section 15](#).

(5) Where the enquiry is conducted by the Government, the Government will pass orders under sub-section (3) of [Section 15](#).

12. The learned counsel would submit that under Sub-clause (1) of Rule 5, originally the authority empowered to make an enquiry and pass order, was notified as either the Government or the Collector or the Special Deputy Collector (Land Acquisition) Tamil Nadu Urban Development Project III. This position came to be changed by including Special District Revenue Officer (Land Acquisition) by passing a G.O.Ms.No.100 Highways and Minor Ports (HF1) dated 1.9.2014. The amendment was brought in the Rule from that date onwards. According to the learned counsel, at the time the impugned order was passed on 17.8.2011, the second respondent was not the competent authority to pass orders in terms of unamended Rule 5. Therefore, the entire acquisition proceedings have to be interfered with as the same had been initiated and concluded by an incompetent authority. He would further submit that in any event, the impugned order passed by the second respondent does not at all disclose any semblance of application of mind and therefore, even otherwise, the order has to be set aside.

13. The learned Addl.Government Pleader appearing for the respondents would submit that the objections were considered and found not feasible and therefore, the impugned rejection order came to be passed. He would further submit that by G.O.Ms.No.171 dated 11.10.2005 itself, under Section 15(2) of the Act, the District Revenue Officer was delegated to perform the functions of a Collector of the District. Therefore, at the relevant point of time, the second respondent was competent to pass orders. At this, the learned counsel appearing for the petitioner would submit that the Government Order cannot supersede the statutory Rule since the said Rule was amended only on 1.9.2014. Therefore, the submission made on behalf of the respondents, cannot be countenanced in law.

14. This Court has given its anxious consideration to the legal and factual submissions made by the learned counsels for the parties. Perused the materials placed on record.

15. As regards the legal submissions of the learned counsel appearing for the petitioner are concerned, this Court is of the considered view that both the contentions raised on behalf of the petitioner are well founded and deserves to be accepted. At the relevant point of time, when the impugned order was passed in 2011, the unamended Rule 5(2) was in place wherein, respondent No.2 was not included as one of the authorities who was competent to conduct enquiry and pass orders. This was amended only on 1.9.2014 and this position cannot be disputed by the learned Addl.Government Pleader for the respondents.

16. More over, even assuming that the authority was

competent to conduct enquiry and pass orders, the impugned order dated 17.8.2011 is per se non-speaking and does not disclose any application of mind on the part of the authority concerned. As rightly contended by the learned counsel for the petitioner that the authority who is invested with the power to deal with the property of the citizens, cannot deal with such issues in a casual manner. No semblance of enquiry can be noticed in the impugned order passed by the second respondent in compliance of the procedure as contemplated under the provisions of the Act/Rules. The authority has completely abdicated his responsibility under the Act/Rules and disposed of the objections of the petitioner without application of mind. Such approach of the authority does not behove well for an official who is entrusted with the task of dealing with the property rights of the citizens of the country. These kind of orders passed by the authorities, cannot be supported by any length of arguments advanced on behalf of the Government. Since the impugned order is completely bereft of any reasoning and application of mind, the same cannot be sustained. Finally, it has to be seen that the order as such has to be set aside on another ground also since the same was passed in violation of earlier orders passed by this Court in W.P.No.8574 of 2011 dated 11.4.2011, wherein, on behalf of the Government, submissions were made that the authority would proceed purely in accordance with the provisions of the Tamil Nadu State Highways Act, particularly, by following the procedure prescribed thereunder.

17. In view of the above said circumstances, this Court has no hesitation in allowing the writ petition. Accordingly, the Writ Petition is allowed. The impugned order dated 17.8.2011 passed by the second respondent in Na.Ka.proceedings No.11696/2008/H6, is hereby set aside. The matter is remitted back to the competent authority for fresh consideration. The authority is directed to pass orders in accordance with law and on merits by considering all the legitimate objections raised by the petitioner in terms of the Tamil Nadu Highways Act and Rules thereof. The order shall be passed within a period of three months from the date of receipt of a copy of this order, after affording an opportunity to the petitioner to file their objections. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

Suk

To

1. The District Collector,
Namakkal,
Namakkal District.

2. The Special Tahsildar (Land Acquisition)-cum-
District Revenue Officer,
Namakkal,
Rasipuram Bye-pass road,
1st Floor, Tahsildar's Office,
Rasipuram-637 408.

+1cc to Mr.V.Srinivasa Babu, Advocate SR.No.91227

W.P.No.4269 of 2012

NRI (CO)
GN(11/01/2018)



WEB COPY