

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2017

CORAM :

The Hon'ble MR.JUSTICE M.SUNDAR

W.P. No.645 of 2012

V.Selvi

.. Petitioner

-vs-

1.Union of India, by its Secretary,  
Ministry of Road Transport & Highways,  
New Delhi - 110 001.

2.Competent Authority / Special District  
Revenue Officer (Land Acquisition),  
Kancheepuram & Tiruvellur Districts,  
Taluk Office Premises, Poonamallee,  
Chennai 600 056.

3.The Project Officer,  
National Highways Authority of India,  
Bhatt Road, St. Thomas Mount,  
Chennai-16.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records of 1<sup>st</sup> respondent pertaining to Notification dt.1.6.2010 under Section 3 (D) of The National Highways Act for acquisition of lands in Survey Nos.164/1A and 164/1A1 of Peruvoyal Village, Gummidipoondi Taluk, Tiruvellore District, quash the same and direct the respondents to issue Fresh Declaration for the purpose, by specifically mentioning of deletion of Weigh Bridge and Godown belonging to petitioner situated in above lands.

For Petitioner : Mr.P.Anbarasan  
for Mr.K.Venkatasubba Raju

For Respondents : Mr.Madhanagopal Rao  
Sr. CG Stdg. Counsel for R-1  
: Mr.M.Elumalai,  
Govt. Advocate for R-2  
: Mr.Richardson for R-3

O R D E R

Mr.Anbarasan, learned counsel, is present on behalf of the learned counsel on record Mr.K.Venkatasubba Raju, for the writ petitioner. Mr.Madhanagopal Rao, learned Senior Central Government Standing Counsel, for respondent no.1, Mr.M.Elumalai, learned Government Advocate, for respondent no.2 and Mr.Richardson, learned counsel, for respondent no.3, are before the Court.

2. By consent of all the learned counsel, the main writ petition itself is taken up for disposal.

3. It is the case of the writ petitioner that she runs a weigh-bridge in the name of G.V.Electronic Weigh Bridge and a Godown at S.Nos.164/1A and 164/1A1 at Peruvoyal Village adjacent to National Highway 5.

4. It is the further case of the writ petitioner that the first respondent before this Court published a notification under Section 3A (1) of the National Highways Act, 1956 (Central Act 48 of 1956) (hereinafter referred to as 'the said Act' in this order for the sake of brevity, convenience and clarity).

5. Vide the above said notification under Section 3A (1) of the said Act, the first respondent proposed acquisition of 284 sq. mtrs. of land, which is, for all practical purposes, the petitioner's land. Such acquisition was for laying Six-Lane Road in the National Highway. As is mandated in the said provision, the above said notification called for objections. It is the case of the writ petitioner that she offered objections on 26.02.2010 to the second respondent. Though it is stated as objections, it is not in dispute that the writ petitioner herself has stated that she has no objection to take over the said land for laying Six-Lane road, but her plea was that the same should be done without affecting the location of her weigh-bridge and godown, as, according to her, she has no other patta land and she is eking out her livelihood from the income from the weigh-bridge and godown.

6. The writ petitioner would submit that she was under the impression that the authorities will consider her objections favourably and would exclude the weigh-bridge and godown from the above said acquisition.

7. Under such circumstances, the writ petitioner contends that the second respondent issued a declaration under Section 3D of the said Act acquiring an extent of only 253 sq.mtrs. To be noted, originally the authorities proposed to acquire 284 sq.mtrs.

8. According to the writ petitioner, there is a breadth of about 13.85 meters from the proposed Six-lane road area to her weigh-bridge and therefore, she was under the impression that the respondents will not in any way interfere with her weigh-bridge and godown for the purposes of acquisition.

9. However, that was not to be. On 07.12.2011, men of the respondents attempted to demolish that part of the superstructure made by the writ petitioner where the weigh-bridge is situate.

10. Therefore, the writ petitioner has come up with the instant writ petition with a prayer to issue a certiorarified mandamus, assailing the records of the first respondent pertaining to the above said notification dated 01.06.2010 under Section 3D of the said Act for acquisition of land in S.Nos.164/1A and 164/1A1 of Peruvoyal Village, Gummidipoondi Taluk, Tiruvellore District.

11. The third respondent has filed a counter-affidavit dated 19.09.2014. To be noted, respondents 1 and 2, being requisitioning bodies, are more in the nature of eo nomine respondents in contradistinction to the third respondent in the writ petition. Therefore, it is to be construed that the pleadings are complete.

12. The crux of the counter-affidavit of the third respondent is that, post notice under Section 3A of the said Act, the procedures for acquisition mandated in the said Act, i.e., enquiry, adequate publicity for the same and all other attendant requirements, were strictly followed. In this regard, it would be necessary to usefully extract the relevant part of the counter-affidavit, which reads as follows:

"5... The enquiry was conducted and the objections were over ruled by the Competent Authority under Section 3-C (2) of the Act. This Respondent marked the lands to be acquired for the formation of six laning in National Highway No.5 at Km 11/000 to Km 53/685 in Pudhuvoyal - I Village, as "Right of way" with reference to markings made by it, fully demarcated, measured and mapped. The extent of land meant for acquisition works out to 9436 sq.mts. excluding the Government lands. Sub-Division records prepared were technically scrutinized. It is also submitted that declaration under Section 3-D (1) of the Act was published in the Gazette of India No.1057 (Extraordinary) (Part-II) Section (ii) under Notification S.O.1268 dated 01.06.2010. On publication

under Section 3D(1), the lands acquired were vested absolutely with the Central Government free from all encumbrances as per Section 3-D(2) of the Act. The area published in D-3(1) Notification as per the Sub-Division records were prepared and got technically scrutinized. Consequent upon publication of Notification under Section 3-D(1), public notices were also published in two local dailies one of which in vernacular language inviting claims from all those persons interested in the lands to be acquired to appear in person or through a legal practitioner before the Competent Authority at 11.00 Am on 26.08.2010 at his office as follows:-

- (1) Dhinamani (Tamil) - 28.07.2010
- (2) The New Indian Express (English) - 28.07.2010

Enquiry was conducted on the notified date. During the enquiry, the land owners furnished documentary evidences and statements to establish their ownership on the land to be acquired. .."

13. Therefore, from what has been stated supra, it would be clear that the case of the writ petitioner is predicated on the pivotal point that, that part of the land on which the weigh-bridge and godown are situate can be excluded from the acquisition and the project can go on.

14. To be noted, the writ petitioner does not dispute that she did not participate in the enquiry, i.e., the proceedings under Section 3C of the said Act.

15. From the above, two aspects emerge. One aspect is that the Court cannot go into the issues of the requirement for a project. The second aspect is that a person whose land is sought to be acquired cannot challenge a notification under Section 3D of the said Act, if he or she has not participated in the 3C proceedings.

16. Both the above said aspects have been elucidatively settled by the Supreme Court of India in the case of Union of India vs. Kushala Shetty reported in (2011) 2 SCC 69. It may be necessary to extract paragraphs 20, 21, 25 and a part of paragraph 28 of the said judgment for the purpose of this case, which read as under:

20. The scheme of acquisition enshrined in the above reproduced provisions makes it clear that once the Central Government is satisfied that any land is



required for the building, maintenance, management or operation of a national highway or part thereof, then, it shall declare its intention to acquire such land by issuing a notification in the official Gazette giving brief description of the land. The substance of the notification is also required to be published in two local newspapers of which one has to be in a vernacular language. Any person interested in the land can file objection within 21 days from the date of publication of the notification in the official Gazette. Such objection is required to be made to the Competent Authority in writing. Thereafter, the Competent Authority is required to give the objector an opportunity of hearing either in person or through a legal practitioner. This exercise is to be followed by an order of the Competent Authority either allowing or rejecting the objections.

21. Where no objection is made to the Competent Authority in terms of Section 3C(1) or where the objections made by the interested persons have been disallowed, the Competent Authority is required to submit a report to the Central Government, which shall then issue a notification in the official Gazette that the land should be acquired for the purpose or purposes mentioned in Section 3A(1). On publication of declaration under Section 3D(1), the land vests absolutely in the Central Government free from all encumbrances. Sub-section (3) of Section 3D provides that where no declaration under sub-section (1) is published within a period of one year from the date of publication of notification under Section 3A(1), the said notification shall cease to have any effect. By virtue of proviso to Section 3D(3), the period during which any action or proceeding taken in pursuance of notification issued under Section 3A(1) remains stayed by a Court shall be excluded while computing the period of one year specified in Section 3D(3).

...

25. The plea of the respondents that alignment of the proposed widening of National Highways was manipulated to suit the vested interests sounds attractive but lacks substance and merits rejection because except making a bald assertion, the respondents have neither given particulars of the persons sought to be favoured nor placed any material to prima facie prove that the execution of the project of widening the National Highways is actuated by mala fides and, in the absence

of proper pleadings and material, neither the High Court could nor this Court can make a roving enquiry to fish out some material and draw a dubious conclusion that the decision and actions of the appellants are tainted by mala fides.

...

28. .... Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. ...

17. These are all matters where larger public interest is involved. However, considering the peculiar and unique circumstances and facts of this case, vide my order dated 23.02.2017, I gave directions, which are contained in paragraph 5 and the same read as follows:

"5. Without going into the merits of the rival submissions, by consent of the learned counsel for the petitioner, learned Additional Government Pleader and the learned counsel for the 3<sup>rd</sup> respondent, the following order is passed:-

"(i) The 3<sup>rd</sup> respondent shall depute an Officer, who shall accompany the writ petitioner and inspect the site and explore the possibility of acquiring the lands required for National Highways, without disturbing the Weigh Bridge and Godown, which according to the writ petitioner is situate in the extent of 253 sq.mts. of land which is sought to be acquired.

(ii) If there is a possibility of doing so, both parties undertake to file a sketch to that effect.

(iii) It is open to the writ petitioner to take one representative with her for the inspection.

(iv) Both the learned counsel for the petitioner and the learned counsel for the 3<sup>rd</sup> respondent undertake that the above exercise shall be completed within a week from today.

(v) A report shall be submitted after exploring the possibility."

18. It is submitted by the learned counsel for the third respondent, Mr. Richardson, that pursuant to the above said order, an inspection was, in fact, conducted in the presence of the writ petitioner's son, who represented the writ petitioner.

19. Most importantly, one other fact that has been brought to my notice is that the same writ petitioner had earlier filed a writ petition on the same issue, being W.P.No.29538 of 2011, in this Court and had withdrawn the same with the leave of this Court, on 05.01.2012.

20. Though it is submitted that this operates as issue estoppel, considering the fact that the writ petitioner has fairly disclosed the earlier writ petition in this case, the same is overlooked owing to the peculiar facts and circumstances of this case, i.e., writ petitioner has been running the weigh-bridge and eking out a livelihood after her spouse's demise.

21. It is also brought to my notice that after the above said 3D notification dated 01.06.2010, an award has also been passed by the appropriate authority on 25.03.2011. As per the said award, the compensation that has been awarded to the writ petitioner is Rs.4,78,389/-. A copy of the award giving compensation to various persons, from whom lands have been acquired for the same project, has been placed before me in the typed set of papers.

22. Owing to all that have been set out supra and in the light of the larger public interest involved and also the rigor of the scheme of the said Act, there is no ground whatsoever to interfere in this matter.

23. It is submitted by Mr. Anbarasan, learned counsel for the writ petitioner, that the weigh-bridge and godown were established by the writ petitioner's husband, who is no more and that the writ petitioner was and is eking out her livelihood with great difficulty all by herself. In view of the said submission, the following leave is granted to the writ petitioner:

- a) As against the above said award dated 25.03.2011, an appeal to the Competent Authority is available under Section 3G (5) of the said Act. There is a time frame within which the Competent Authority is to be approached for such enhancement. However, considering the pendency of the instant writ petition, if the writ petitioner chooses to approach the Competent Authority under Section 3G (5) of the said Act for enhancement of the compensation, it will

be open to the writ petitioner to seek the benefit of Section 14 of the Limitation Act. In other words, it would be open to the writ petitioner to seek exclusion of the time spent in this writ petition.

- b) If the petitioner chooses not to file for enhancement under Section 3G (5) of the said Act within four (4) weeks from the date of receipt of a copy of this order, it is open to the writ petitioner to seek payment out of the compensation already deposited and the same shall be disposed of in accordance with the operating procedures by the Court concerned, without being swayed by the contents of this order.
- c) As the writ petitioner is willing to dismantle, remove and take away her equipments and effects in the weigh-bridge and the godown situate in S.No.164/1A and 164/1A1 of Peruvoyal Village, Gummidipoondi Taluk, Tiruvellore District (subject matter of the instant writ petition), she shall be permitted to do so within four (4) weeks from the date of receipt of copy of this order. The respondents shall not precipitate the matter for the said period of four (4) weeks so as to facilitate the writ petitioner to dismantle and take away her equipments and effects.
- d) It is made clear that if the writ petitioner does not remove her effects and equipments, after dismantling either in full or in part within the abovesaid period of four (4) weeks, as set out in the preceding limb of this order, it will be open to the respondents to proceed further in accordance with law under the said Act.

24. This writ petition is disposed of on the above terms. No costs. Consequently, M.P.No.2 of 2012 is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

sra



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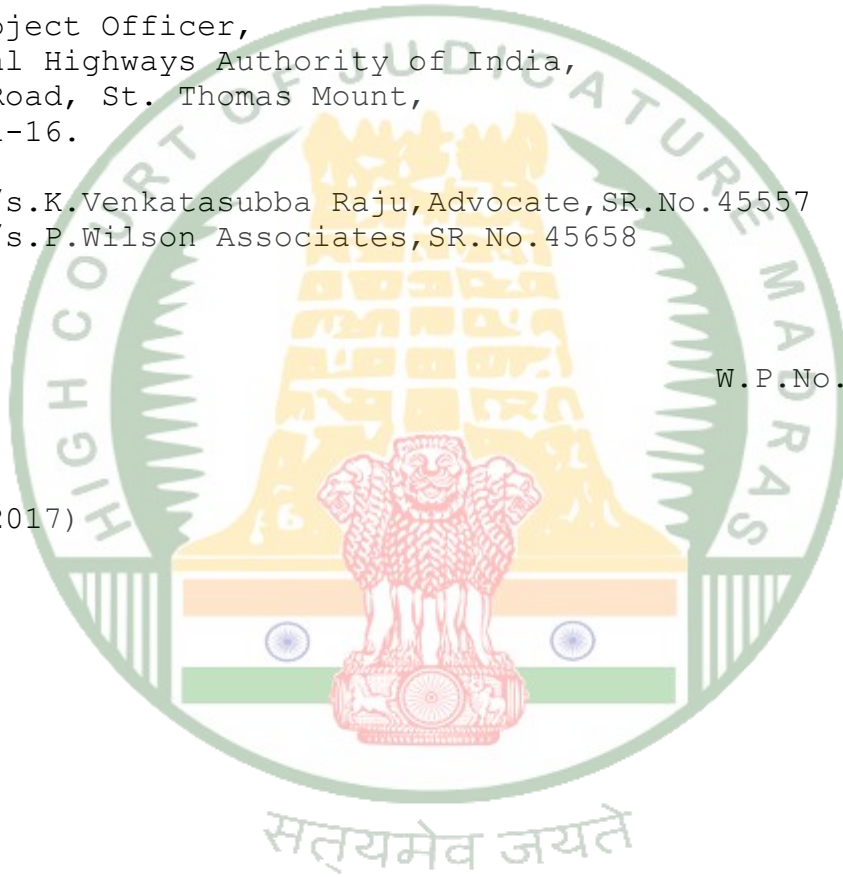
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Chennai-16.

+1cc to M/s.K.Venkatasubba Raju, Advocate, SR.No.45557

+1cc to M/s.P.Wilson Associates, SR.No.45658

W.P.No.645 of 2012

AR(CS V)  
CU(14/07/2017)



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