



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.(MD)No.199 of 2017

&

C.M.P.(MD)No.2021 of 2017

- 1.The Secretary,
Ministry of Shipping, Road Transport and Highways,
New Delhi.
 - 2.The Project Director,
National Highways Authority of India,
Door No.14, Travellers Bungalow Road,
Kamaraj Nagar 1st Street,
Valliyoor Post,
Tirunelveli District.
- ... Appellants

Vs.

- 1.Thomas Victor
represented by his power of Attorney Agent
Sheela Sebastian.

- 2.Sheela Sebastian

- 3.The Competent Authority and Special
District Revenue Officer,
Land Acquisition - National Highways,
299/A1, A2, 3rd Middle Street,
Thiyagaraja Nagar,
Sivandipatti Road,
Tirunelveli - 627 011.

4. The District Collector,
Tirunelveli District.

(fourth respondent is *suo motu* impleaded
as per the order of this Court
dated 18.04.2017)

... Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letter Patent against the order passed by this Court in W.P.(MD)No.9443 of 2008, dated 16.03.2016.

Prayer in WP(MD). 9443/ 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records on the file for the 3rd



respondent in G.O 182 dated 22/02/2007 under sec. 3D(1) of the Act and further the award no. 33/2007 and dated 26/11/2007 and quash the same.

WEB COPY

For Appellants	: Mr.K.K.Senthil Velan
For R1 & R2	: Mr.S.Ramesh
For R3	: Mr.V.Muruganantham
	Additional Government Pleader

JUDGMENT

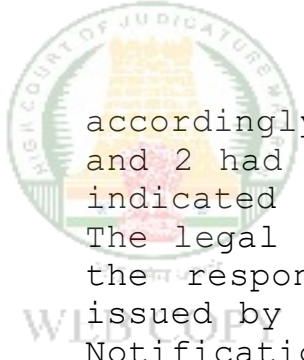
(Judgment of the Court was delivered by **T. S. SIVAGNANAM, J.**)

Heard Mr.K.K.Senthil Velan, learned Standing counsel appearing for the appellant, Mr.S.Ramesh, learned counsel appearing for the respondents 1 and 2 and Mr.V.Muruganantham, learned Additional Government Pleader appearing for the third respondent.

2. In the light of the order which we propose to pass in this appeal, we deem it appropriate to implead the District Collector, Tirunelveli District as the fourth respondent. Accordingly, the District Collector, Tirunelveli is impleaded as a fourth respondent in the writ appeal.

3. The appellants are aggrieved by the order passed in W.P.(MD).No.9443 of 2008 filed by the respondents 1 and 2, dated 16.03.2016. In the said writ petition, the respondents 1 and 2 sought for issuance of a Writ of Certiorari to quash the Notification issued under Section 3-D(1) of the National Highways Act, 1956, dated 22.02.2007 and the award in Award No.33 of 2007, dated 26.11.2007.

4. The case of the writ petitioners was bunched in a very narrow campus, the lands which were acquired comprised in Survey Nos.1777/1A2 and 1778/2B were classified as dry lands owned by the mother of the respondents 1 and 2 viz., Doris Victor, W/o. A.D.J.Victor. The lands were acquired by the National Highways for four-laning including the by-pass on the stretch of land from Km.120.000 to 224.000 (Madurai-Kanyakumari Section) in Tirunelveli District. The case of the writ petitioners/respondents 1 and 2 is that their mother passed away on 12.07.2000 and the revenue records were mutated in the name of the respondents 1 and 2 much prior to the issuance of the impugned Notification and without mentioning the names of the respondents 1 and 2, the appellants had issued the Notification under Section 3-D(2) of the National Highways Act and therefore, the same is illegal and liable to be quashed. Though the objection was raised by the respondents 1 and 2, they primarily wanted enhancement for which they wanted Notification to be issued in their name. When the matter came up before the Writ Court, the Court was convinced by the stand taken by the writ petitioners/respondents 1 and 2 that they are entitled to claim for higher compensation and held that the Notification issued in the name of the dead person cannot be sustained and



accordingly, allowed the writ petition. Though the respondents 1 and 2 had succeeded in the writ petition, their grievance not been indicated as they have not been paid any enhanced compensation. The legal issue which has to be noted in the instant case is that the respondents 1 and 2 have not challenged the Notification issued by the appellants under Section 3-D(1) of the Act, if the Notification has been published in the Government Gazette as well as in the newspaper and for provides an opportunity to submit their objections. The Plan and other details of the lands gathered under the Notification was made available in the Office of the Competent Authority viz., the third respondent for inspection. Admittedly, the respondents 1 and 2 did not raise any objection. Thereafter, Notification under Section 3-D was issued and the acquisition proceedings completed and award has also been passed adversely. The petitioners submitted their objection and since the same was not considered, they filed the writ petition.

5. The settled legal principle is that the writ petition cannot be entertained after the award has been passed by the Land Acquisition. In the instant case, the land owners cannot raise any objection, because they seek for setting aside the entire acquisition proceedings on the ground that the Notification was issued in the name of the mother of the respondents 1 and 2 Late Doris Victor, W/o. A.D.J. Victor.

6. The explanation given by the appellants is that the detail report was in the year 2002 and as on the said date, in the revenue records, the name of the original land owner / the mother of the respondents 1 and 2, though she had passed away in the year 2000 itself. Thus, the appellants cannot be wholly faulted for having issued Notification in the name of the respondents 1 and 2 as the entire date which was required to be collected was done in the year 2002, when the name of the original land owner reflected in the revenue records. In any event, if there is any objection, the respondents 1 and 2 could have objected immediately after the Notification issued under Section 3-A(1) as they are not done. As on date, the entire acquisition proceedings have been completed and the four-laning has been done and all the works have attained finality in the year 2009 itself.

7. The learned counsel appearing for the respondents 1 and 2 on instructions submits that the respondents 1 and 2 are not objecting to the acquisition proceedings, but they are seek for higher compensation. In terms of Section 3 (G) (5) of the Act, if the compensation determined by the Competent Authority / third respondent herein under Sub-Sections (1) (2) (3) G is not acceptable to either of the parties, determined by the Arbitrator to be appointed by the Central Government. The District Collector of Calcutta has been appointed as an Arbitrator to adjudicate the claim of the land owners for enhanced compensation. In the instant case, the newly impleaded fourth respondent is the



arbitrator.

8. At this stage, it would be worthwhile to refer to the decision of the Honourable Supreme Court in the case of **Union of India vs. Kushala Shetty and others** reported in (2011) 12 SCC 69, wherein, the Court has considered as to the effect of the Notification under Section 3 -A and held as follows:

"22. In this case, the Notification dated 10.08.2005, which was published in the official Gazette of the same date and of which substance was published in two local newspapers, contained full description of the land proposed to be acquired for widening three national highways. The names of the villages in which the land proposed to be acquired was situated, the survey numbers including sub-survey numbers, the nature, type and area of the land were also given in the schedule appended to the notification. Not only this, it was clearly mentioned that land plans and other details of the land are available in the office of the competent authority. This is the reason why none of the landowners (including the respondents) made any grievance that the notification issued under Section 3-A(1) of the 1956 Act was vague or that due to lack of particulars/details, they were prevented from effectively exercising their right to file objections in terms of Section 3-C(1). Of course, a grievance on this score was made in the objections dated 16.10.2006 filed by some of the landowners of Padavu Village, but that was clearly an afterthought and, in any case, the same did not require consideration because of non-adherence to the time schedule specified in Section 3-C(1) of the 1956 Act."

9. The aforesaid decision clearly says that if the land owners were crippled, they can very well submit their objection for the Notification under Section 3 (1) A is published and such Notification cannot be faulted for not giving the names of the land owners in the Notification as the plan and other details are made available by the competent authority.

10. The learned counsel appearing for the respondents 1 and 2 relied on the decision of the Honourable Supreme Court in the case of **Competent Authority vs. Barangore Jute Factory** reported in (2005) 13 SCC 477 and referring to the observations made in paras-13 and 14 of the judgment, submitted that the date of Notification should be shifted in the extent case also. We are not agreeing with the submission made by the learned counsel for the respondents 1 and 2 for the simple reason that in the case of Competent Authority, the land plan details were not made available and therefore, while following the acquisition proceedings, the Court wanted to give relief to the land owners. Therefore, the said judgment cannot be applied to the facts of the present case



and it is clear distinct.

11. Hence, for all the above reasons, the conclusion arrived at by the Writ Court has to be necessarily interfered with. However, this Court, considering the plight of the land owners, is also simultaneously inclined to issue appropriate directions to the District Collector, Tirunelveli to consider the claim for enhanced compensation.

12. In the result, the Writ Appeal is allowed and the order passed in the writ petition is set aside. The respondents 1 and 2 are directed to submit a detailed representation seeking for enhanced compensation and enclosing documents in support of the claim and submit the same before the fourth respondent along with the copy of this order. On receipt of the same, the fourth respondent shall consider the representation and adjudicate the claim made by the respondents 1 and 2 and the application should not be rejected on the ground of limitation as the respondents 1 and 2 had challenged the acquisition proceedings before this Court as early as in the year 2008 itself. The fourth respondent is directed to complete the adjudication process and pass an order, after affording an opportunity of personal hearing to the respondents 1 and 2, within a period of three months from the date of receipt of a copy of such application. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

/True Copy/

Sub Assistant Registrar

To

1. The Competent Authority and Special
District Revenue Officer,
Land Acquisition - National Highways,
299/A1, A2, 3rd Middle Street,
Thiyagaraja Nagar,
Sivandipatti Road,
Tirunelveli - 627 011.

2. The District Collector,
Tirunelveli District.

+1cc to M/S THE SPECIAL GOVERNMENT PLEADER, SR.NO. 52765

+1cc to Mr.K.K.Senthilvelan, Advocate, SR.No.52665

+2cc to Mr.V.Raghavachari, Advocate, SR.52690

W.A. (MD) No.199 of 2017

18.04.2017