

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.9120 of 2017

and

W.M.P.No.10048 of 2017

1. S.Balamurugan
2. S.Muthukumarasamy Petitioners
Vs

1. The State of Tamil Nadu,
Represented by its Secretary,
Highways Department,
Fort St.George,
Chennai.

2. The District Collector,
Erode District.

3. The District Revenue Officer cum
Land Acquisition Officer,
Erode District.

4. The Divisional Engineer,
Highways,
NABARD and Village Roads,
Erode District. Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned order passed by the 3rd respondent vide his office Proceedings No.Na.Ka.No.14524/2013/Aa.1/dated 6.1.2017 rejecting the petitioner's representation dated 9.11.2016 and quash the same with regard to the petitioners' land in R.S.No.331/2,3,4,5 and 335/1, 2 of Elavamalai Village, Erode Taluk, Erode District to the extent of 42.8 Sq.Meters is concerned.

For Petitioners

: Mr.I.C.Vasudevan

For Respondents

: Mr.A.Zakir Hussair
Government Advocate

O R D E R

1. The short facts that are necessary for the disposal of the case may be briefly stated as below:

- The petitioners are brothers, and are joint owners of a piece of agricultural land measuring 1.32 acres in RS.No.331/2, 331/4 (correlated with S.F.No.269/7, 351/1) of Elavamalai Village, Erode Taluk, Erode District and another extent of 35 cents in R.S.No.335/10 and 335/11 of Elavamalai Village, Erode Taluk, Erode District. While so, on 05.11.2014, the respondent had issued a notice under Section 15(2) of the Tamil Nadu Highways Act, followed by a notification under Section 15(1) of the said Act for formation of outer ring road for Bhavani. For the said purpose, an extent of 42.8 Sq.Metres, approximated to 1.05 cents, was proposed to be acquired from the aforesaid property of the petitioner. However, prior to the issuance of 15(1) notification no personal notice was given to the petitioners under Section 15(2). While so, the fourth respondent Vide his communication dated 19-01-2015 had intimated the petitioners about the rejection of their objections.
- This was followed by a notice dated 17-06-2016 requiring them to surrender possession of the said property. This, the petitioner challenged in W.P. No. 15484 of 2015 and Vide its order dated 03-06-2015, this Court partly allowed the petition, set aside the notice directing the petitioner to hand over possession, and remanded the matter back to the authority concerned to decide the issue de novo after affording an opportunity to the petitioner to put forth their case against the proposed acquisition. This resulted ultimately in the passing of the impugned order by the 3rd respondent/the Land Acquisition Officer dated 06-01-2017, wherein the petitioner's proposal to use the existing road was rejected yet again. This is now in challenge in this petition.

2. In the counter filed by the 3rd respondent/the District Revenue Officer and designated Land Acquisition Authority, it is averred that besides a public notice, Show Cause Notice to the petitioners who were issued and an enquiry on the same was held on 12.12.2014. The petitioners who have participated the same and the enquiry took place consist with Rule 5 of the Tamil Nadu Highways Rules 2003 the enquiry was thereafter fixed to 12.03.2015. However, without utilising the opportunity so given, the petitioners rushed to this Court with W.P.No.15484 of 2015 challenging the notice under Section 15(2) of the said Act. On that day enquiry was fixed on 12.03.2015 and objections were held in which one of the petitioners had appeared. After careful consideration of the objection notification under Section 15(1) was issued on 20.01.2016. Thereafter, the petitioners are sent

their objections on 09.11.2016. The third respondent has given a careful consideration to the objections raised and has passed the order which is now impugned without baselessly.

3. Heard Mr.I.C.Vasudevan, learned counsel for the petitioners and Mr.A.Zakir Hussain, learned Government Advocate for the respondents.

4. In the course of hearing, the petitioners made following submissions:

- The lands proposed to be acquired are fertile agricultural lands, that there exists another road from Chithode-Bhavani that runs along their property and this was formed over the land that the petitioners had gifted to the Government of Tamil Nadu under a gift deed dated 20.09.2005. Now, the respondents, with no justifiable reason are abandoning the old road, and are attempting to lay a new outer ring road almost parallel to the existing road for which acquisition of petitioner's property is undertaken.
- That the proposed acquisition would sever petitioners' property into two portions, one to the north of the proposed road and the other portion to its south, with the prospect of obstructing the flow of water from one to the other.
- That, at any rate compensation is payable in terms of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013, and no benefits conferrable on the owners of land thereunder should be diluted, merely because lands are acquired under the provisions of Tamil Nadu Highways Act, 2001.

5.1. Countering the said argument, the learned Government Advocate, assisted by Mr.T.Sivan, Assistant Divisional Engineer, Nabard & Rural Roads, Gobichettipalayam, Erode District has explained why the present acquisition is inevitable to lay the outer ring road. Allaying the apprehension, the learned Government Advocate explained to this Court with the aid of a plan of the proposed road, that the existing road could not be used as it runs in a zigzag pattern with several curves, and it is extremely difficult to form a straight road the proposed acquisition is necessary. Irrespective of the explanations offered, the design of the road is expert's job and it is not ordinarily subjected to judicial review.

5.2. Secondly, the proposed outer ring road, though pose a prospect of dividing the petitioner's property into two unequal parts, yet that would not obstruct the irrigation of both the pasts, as there would be constructed least three culverts almost adjacently, and this would ensure that free flow of water

beneath the proposed road.

5.3. The learned Government Advocate has also made a statement that the land acquisition authority would quantify the compensation payable in terms of the Central Act 30/2013.

6. Plainly petitioners can no more complain about the design of the road, nor canvass a case founded on his fear that his fields may go fallow for obstruction to irrigation. What remains is only his right to obtain compensation. On this the learned Government Advocate's statement (made on instruction) that the same would be quantified only in terms of Central Act 30/2013 is critical, Sec.105-A thereto notwithstanding. Sec.105-A reads:

"105-A. Provisions of this Act not to apply in certain cases or to apply in certain Tami Nadu Acts or to apply with certain modifications-

(1) Subject to sub-section (2), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fifth Schedule.

(2) The State Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be. (emphasis supplied)

(3) -----

7. Section 105-A can be broadly two parts:

a) It excludes the application of Central Act 30/2013 to acquisition made under the Special Acts of the State which are enumerated in Schedule V. This however, is subjected to Section 105-A (2).

b) On the point of payment of compensation, however Section 105-A (2) declares that the legislature is in no mood to substitute the Parliamentary spirit to confer benefits on the affected land owners whose lands were acquired under the State Acts included in Schedule-V to the Right to Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30/2013). It manifests the legislative anxiety not to discriminate land owners under different State enactments in the matter of payment of compensation.

8. The learned Government Advocate submitted that a notice under Section 16(2) requires the petitioners to participate in the inquiry for passing an award and the same has been issued to them on 17.06.2017.

9. In the result, this writ petition is disposed of with following directions:

- That while executing the work, culvert of the dimension 2 x 2 meters must be constructed as was promised and consistent with the design made.
- The respondents are directed to issue notice to the petitioners for an enquiry for passing the award on their respective address and pass an award after affording full and effective opportunity of hearing to the petitioners. While passing the award, the Land Acquisition Officer shall taking into account the spirit behind Section 105-A (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30/2013) and to adopt all the provisions that benefit the land owners in the matter of payment of compensation and such other benefits that may be conferrable on them.
- On the specific point of any loss/demuniton in value of the property of the petitioners due to severance in its physical character, the land acquisition authority should bear in mind Sec.28 (Thirdly) of the Right to Fair Compensation Act. Besides, the applicability of Sec.98 of the Right to Fair Compensation Act should also be borne in mind.

10. The award enquiry shall be completed within a period of four months from the date of receipt of a copy of this order. The respondents shall not take possession of the property until at least 80% of the compensation amount is deposited into petitioners account. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Government of Tamil Nadu,
Highways Department,
Fort St.George,
Chennai.

2. The District Collector,
Erode District.

3. The District Revenue Officer cum
Land Acquisition Officer,
Erode District.

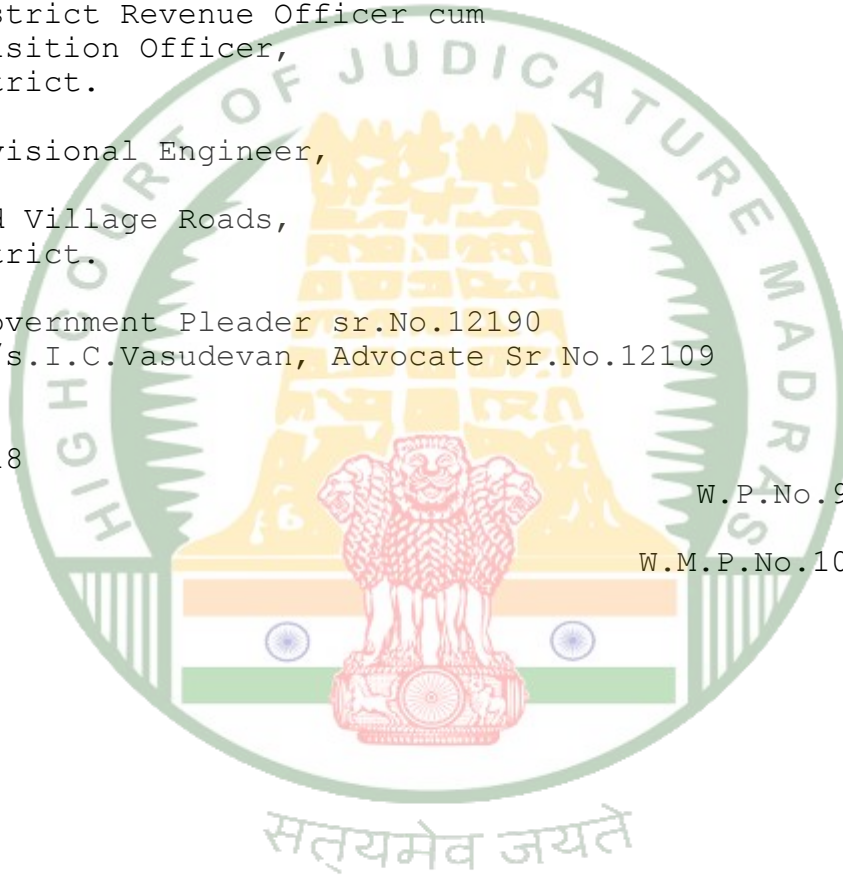
4. The Divisional Engineer,
Highways,
NABARD and Village Roads,
Erode District.

+1cc to Government Pleader sr.No.12190

+1cc to M/s.I.C.Vasudevan, Advocate Sr.No.12109

RSI (CO)
sm:5.4.2018

W.P.No.9120 of 2017
and
W.M.P.No.10048 of 2017



WEB COPY