

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.07.2018

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.10248 of 2018  
and W.M.P.No.20869 of 2018

Pavai Varam Educational Trust,  
rep.by its Chairman Mr.V.Natarajan  
64-C, Rotary Nagar,  
Rasipuram 637 408,

... Petitioner

Versus

- 1.The District Collector,  
Namakkal, Namakkal District.
- 2.The Special Tahsildar (Land Acquisition)-cum-  
District Revenue Officer,  
Namakkal, Rasipuram Bye-pass Road,  
1<sup>st</sup> Floor, Tahsildar's Office,  
Rasipuram 637 408.
- 3.The Superintending Engineer,  
Office of the Superintending  
Engineer (H), Salem Circle,  
Salem 636 302.
- 4.The Divisional Engineer,  
Office of the Assistant Divisional Engineer (H)  
Namakkal Sub-Division,  
Construction and Maintenance Department  
Namakkal-637 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of The Constitution of India praying to issue a writ or order or direction, particularly in the nature of writ of Certiorarified Mandamus calling for the records of the 2<sup>nd</sup> respondent in Na.Ka.No.2999/2018/H.6 dated 11.04.2018 and quash the same and further direct the respondents to follow the procedure contemplated under Tamil Nadu Highways Act, 2001 (Act 34/2002).

For Petitioner: Mr.R.Thiagarajan, Senior counsel for  
Mr.V.Srinivasababu

For Respondents :Mr.D.Raja,  
Additional Government Pleader

ORDER

Heard Mr.R.Thiagarajan, learned Senior Counsel appearing for the petitioner and Mr.D.Raja, learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

2. This writ petition has been filed for issuance of writ of certiorarified mandamus to quash the order of the 2<sup>nd</sup> respondent passed in Na.Ka.No.2999/2018/H.6 dated 11.04.2018 and to direct the respondents to follow the procedures contemplated under the Tamil Nadu Highways Act, 2001.

3. The case of the petitioner is that the petitioner Trust purchased the land measuring to an extent of 10.08 acres at Anaipalayam village, Rasipuram, Namakkal District, with a view to promote Women Educational Institution, in the name of Pavai Arts and Science College for Women. After obtaining necessary permission from the concerned authorities, the College was established in the year 2009.

4. The petitioner would state that the 2<sup>nd</sup> respondent has issued a publication on 10.10.2010 to acquire lands for the purpose of formation of by-pass road between Singalanthapuram-Ponkurichi. In the notification, the petitioner's land measuring to an extent of 2400 sq.ft in S.No.57/2A2A was published and a showcase notice under Section 15(2) of Tamil Nadu Highways Act, 2001 was also issued seeking objection from the petitioner. The petitioner Trust made a representation to the 1<sup>st</sup> respondent on 06.11.2010, giving their objections and further on 20.11.2010, a reply to the showcase notice was also forwarded to the 2<sup>nd</sup> respondent for their consideration. However, by the impugned order, the 2<sup>nd</sup> respondent has rejected the objections of the petitioner.

5. Mr.R.Thiagarajan, learned Senior Counsel appearing for the petitioner would urge that as per Rule 5 (2) and (3) of the Tamil Nadu Highways Rules, 2003 (herein after referred as 'the Rules'), the respondents have to consider the objections of the land owners and after providing an opportunity to the parties, and recording the evidences, the 2<sup>nd</sup> respondent can only forward the recommendation to the Government to pass order under Rule 5 (4) and (5) of the Rules, however, in the case on hand, the 2<sup>nd</sup> respondent has rejected the request contrary to the rules.

6. Mr.D.Raja, learned Additional Government Pleader appearing for the respondents would submit that the impugned order is not an order of rejection by the 2<sup>nd</sup> respondent, but it

is only a recommendation to the Government to pass orders as per Rule 5 (4) and (5) of the Rules. It is further contended that except the petitioner, all other land owners have given their consent for formation of by-pass road.

7. At this juncture, it is relevant to extract following Rules for reference:

''5.Manner of Publication of the public notice: Before publishing a notice under Sub-section (1) of Section 15, [the Government or the Collector or the Special District Collector (Land Acquisition), Tamil Nadu Urban Development Project - III or the Special District Revenue Officer (Land Acquisition)] 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 thqt effect to be published in one English and in one Tamil newspaper 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 objection is 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 or the Special District Collector ( Land Acquisition), Tamil Nadu Urban Development Project-III or the Special District Revenue Officer (Land Acquisition)]as the case may be, shall fix a date for hearing the objections and give notice thereof to the objector as well as to the Highways Department. Copies of the objection 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 or the Special District Collector (Land Acquisition), Tamil Nadu Urban Development Project-III or the Special District Revenue Officer (Land Acquisition)] 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 or the Special District Collector (Land Acquisition), Tamil nadu Urban Development Project-III or the Special District Revenue Officer (Land Acquisition)] as the case may be, shall hear the objector or a person authorised by him in this behalf and the representative, if any, of the Highways

Department and record any evidence that may be produced 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 enquiry, the Collector shall submit all the details of the enquiry to 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 order under Sub-Section (3) of Section 15.''

8. From the perusal of the above Rules, it is evident that the respondent shall issue a showcause notice under Rule 5 (2) of the Act and after receiving objections from the land owners, an enquiry has to be conducted in the presence of land owners and the authorities of the Highways Department and after recording evidence, the 2<sup>nd</sup> respondent shall forward the same to the Government under Rule 5 (4) to pass orders. But in the instant case, the 2<sup>nd</sup> respondent, without any authority has rejected the objections of the petitioner and therefore, the impugned order is liable to be quashed.

9. In that view, the impugned order passed by the 2<sup>nd</sup> respondent in Na.Ka.No.2999/2018/H.6 dated 11.04.2018 is quashed and the matter is remanded back to the 2<sup>nd</sup> respondent, who shall submit all the details of the enquiry as per the Rule to enable the Government to pass orders accordance with law.

10. Accordingly the writ petition is allowed. No costs. Consequently connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

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To

1.The District Collector,  
Namakkal, Namakkal District.

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

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3.The Superintending Engineer,  
Office of the Superintending  
Engineer (H), Salem Circle,  
Salem 636 302.

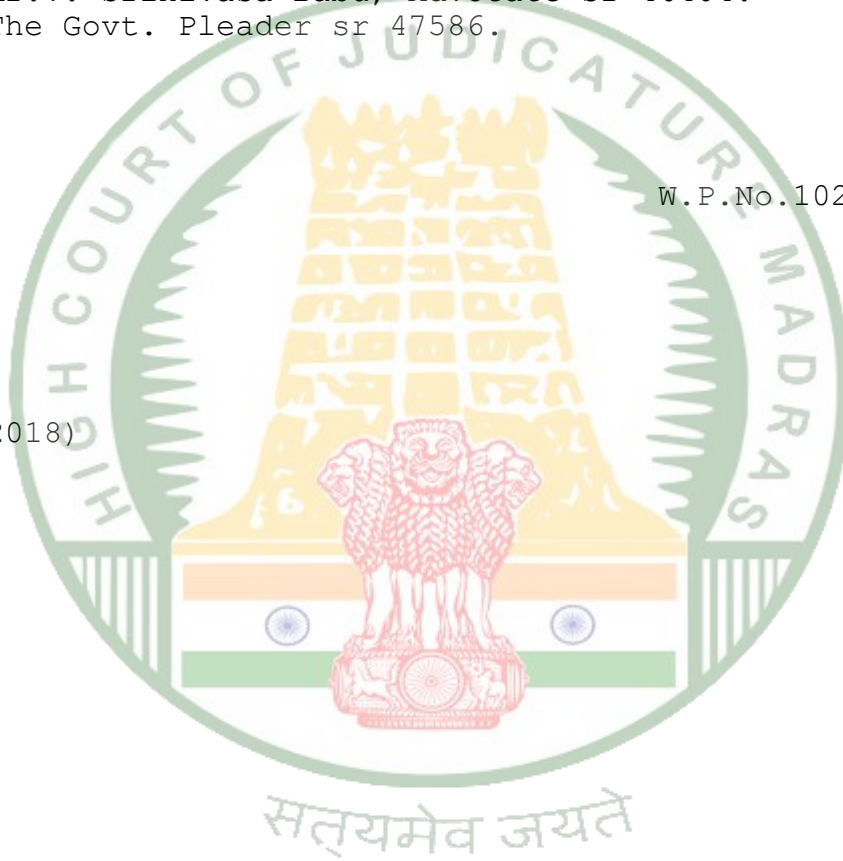
4.The Divisional Engineer,  
Office of the Assistant Divisional Engineer (H)  
Namakkal Sub-Division,  
Construction and Maintenance Department  
Namakkal-637 001.

+1 CC to Mr.V. Srinivasa Babu, Advocate sr 46404.

+1 CC to The Govt. Pleader sr 47586.

W.P.No.10248 of 2018

NMI (CO)  
SP(16/08/2018)



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