

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2018

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

W.P. Nos. 6094 & 6095 of 2018

and

W.M.P. Nos.7511 to 7516 of 2018

M.Chandrasekaran ... Petitioner in W.P.6094/2018

C.Narendrakumar ... Petitioner in W.P.6095/2018

Vs.

1. State of Tamilnadu,
represented by its Additional Chief Secretary,
Highways and Minor Ports (HP1) Department,
Secretariat,
Chennai - 600 009.
 2. The District Collector,
Salem District,
Salem.
 3. The Land Acquisition Officer-cum-
District Revenue Officer,
Salem.
 4. The Chief Engineer (H), Highways Projects,
Integrated Chief Engineer's Complex,
H.R.S. Campus,
76, Sardar Patel Road,
Guindy, Chennai-600 025.
 5. The General Manager,
Southern Railway,
Chennai - 600 003.
 6. The Deputy Chief Engineer (Constructions),
Southern Railway,
Salem.
- ... Respondents in both Writ
Petitions

COMMON PRAYER : Petition filed under Article 226 of the
Constitution of India, praying to issue a Writ of
Certiorarified Mandamus, calling for the records of the 1st

respondent in Notification No.11(2)/HWMP/117/2018 issued under Sec. 15 (1) of the Tamilnadu Highways Act, 2001 vide G.O. (D) No.13 Highways and Minor Ports (HP1), 19.01.2018 published in Tamil Nadu Govt. Gazette No.6 Part II - Section 2, pages 144 to 151 dated 07.02.2018 and quash the same so far as the petitioners is concerned and direct the respondents to implement the Old approved plan of the year 2011.

For Petitioner : Mr.S.Raveekumar
in both W.Ps.

For Respondents : Mr.D.Raja
in both W.Ps. AGP for R1 to R4

Mr.P.T.Ramkumar
for R5 and R6

COMMON ORDER

Both the writ petitions have been filed challenging the notice issued under Section 15(1) of the Tamil Nadu Highways Act 2001 (hereinafter referred to as "Act").

2. According to the petitioners, they are the owners of the properties in T.S.Nos. 19/35, 19/36, 19/37, 19/44, 19/45, 20/1E, 20/6, 20/7, 20/8, 20/10, 20/11, 20/2A, 20/12, 20/3A, 20/3B, 21/11 & 19/39 in Salem Town. The respondents sought to acquire the above lands for the purpose of constructing a railway over bridge. A notice under Section 15(2) of the Act has been issued to the petitioners, for which they have submitted their objections on 24.08.2016 and 20.08.2016, stating that there are number of Government poramboke lands are available on the northern side of the Railway line, which is more feasible than the properties sought to be acquired for the purpose of construction of the railway over bridge. The respondents can very well construct the bridge by effectively utilising the Government Poramboke lands, thereby the cost of acquisition can also be avoided. Apart from that, originally, in the year 2011, the respondents have proposed three alignments for the same railway over bridge and one of the alignments was approved on 29.12.2011 by an Expert Committee, as per the above approved alignment, there was no necessary to acquire private lands. Now, all of a

sudden, a new alignment was proposed in the year 2013, and as per the new alignment, the petitioners' lands are sought to be acquired and there is no valid reason given for changing the alignment. If the acquisition proceedings are initiated based on the original alignment, there is no necessity for acquiring the petitioners' land. Apart from that, for the notice under Section 15(2) of the Act, the petitioners have raised their objection and the same has not been properly considered by the Government and no separate order has been passed under Section 15(3) of the Act.

3. The third respondent-Land Acquisition Officer filed counter affidavit stating that, the lands of the petitioner were sought to acquire for the purpose of Road Over Bridge in L.C.No.183 under the Tamil Nadu Highways Act 2001. Notice under Section 15(2) of the Act was issued on 22.07.2016, and the same was properly served on the land owners. An enquiry was conducted on 31.10.2016. In that enquiry, the petitioners have filed their objections and the same was forwarded to the Highways Department, and they have also submitted their remarks. Thereafter, the petitioners filed their additional objections on 14.09.2017. After completion of enquiry, necessary proposal for publication of notification under Section 15 (1) of the Act was sent to the first respondent on 06.09.2017, and the first respondent, after careful consideration, has passed order under Section 15(1) of the Act and the notification was issued on 19.01.2018, in G.O.No.13, Highways and Minor Ports (HP1). Subsequently, it was also gazetted on 07.02.2018, an errata was also issued on 25.06.2018 in G.O.No.159, Highways and Minor Ports(HP1). Thereafter, award enquiry under Section 19(2) of the Act was conducted on 23.02.2018, and the petitioners also appeared for the said enquiry, objecting the land values fixed by the Government.

4. It is further stated in the counter affidavit that, so far as the change of alignment is concerned, originally three alignments for the said work has been proposed by the Highways Department, and it was placed before the District Road Safety Committee headed by the District Collector, Salem on 24.12.2011. It was communicated to Railways for their opinion and concurrence. However, the Chief Bridge Engineer, Southern Railways, Chennai, has opined to change the skew angle to less than 45 degree, vide letter NO.W/352/SA/33/dated 16.07.2012. Hence, the revised alignment was prepared with skew angle

of 36.9 degree and the same has been placed before the District Road Safety Committee headed by the District Collector, Salem. The same was also approved by the committee and there is no malafide in it, and the proposed alignment mentioned by the petitioners which passes through the Government lands, lies in a very sharp angle of 68.92 degree and it was not accepted by the Railways Department.

5. The sixth respondent also filed a counter affidavit stating that the original alignment of the Tamil Nadu Highways with a skew angle on 56.12 degree was not accepted by the Railways as it is a very sharp curve. By letter dated 16.07.2012, the office of the Chief Bridge Engineer, Southern Railways advised the Chief Engineer, Highways Projects to change the skew angle to less than 45 degree and also for changing of ROB location chainage of 325.096 to 387.543 towards Salem Town Railway Station and the revised GAD was prepared with skew angle of 36.1 degree and it was finalised and signed by the Railways and Highways Department. Now 50% of the work has already been completed. At this stage, there is no chance for changing the alignment.

6. The learned counsel appearing for the petitioner would submit that after selecting the alignment, all of a sudden, the respondents changed alignment with malafide intention and if the railway over bridge is constructed as per the original alignment, there is no necessity to acquire the private lands. Even though the petitioners have submitted their objections in this regard, the same was not properly considered by the first respondent. No separate order has been passed rejecting their objections, which is total violation of Section 15(3) of the Act.

7. Per contra, the learned counsel appearing for the respondents 1 to 5 would submit that, since the alignment has been changed, based on the technical issues raised by the railways, there is no malafide in it. He would also submit that after receipt of the report from the third respondent-Acquisition Officer, the Government passed an order rejecting all those objections raised by the land owners. Thereafter, the notice under Section 15(1) of the Act has been issued.

8. The learned counsel appearing for the sixth respondent would submit that since the original alignment proposed by the High Ways Department is not acceptable due to very sharp curve, thereafter, the alignment has been changed, both the Railways Department and the Highways

Department agreed for the present alignment and now more than 50 % of the work on the Railway portion has been completed.

9. I have considered the rival submissions and perused the materials available on record.

10. The first limb of the argument of the petitioner is that the alignment has been changed with a malafide intention. But, a perusal of the records, it could be seen that even though the authorities proposed a particular alignment, due to some technical problem, Railways refused to accept the said proposal and only on the request of the Railways, the present alignment has been prepared by the High Ways Department, which is also accepted by the Railways Department, thereafter, proceeded with the new alignment. Hence, I find no malafide in it. Apart from that, changing of alignment is purely a matter to be decided by the experts. Unless it is established it was done with malafide intention, this Court cannot interfere in it. Apart from that, now it is submitted by the Railways Department that only on their request, the alignment has been changed.

11. With regard to the second limb of the argument of the petitioner is concerned, after enquiry, the proposal sent by the third respondent to the Government for passing order under Section 15(3) of the Act, the Government has considered the proposal and issued a notification under Section 15(1) of the Act and there is no violation of Section 15(3) of the Act.

12. Considering the above circumstances, I find no merits in the writ petitions and the same are liable to be dismissed.

13. Accordingly, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/--

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gbi/mrp

To

1. The Additional Chief Secretary,
State of Tamilnadu,
Highways and Minor Ports (HP1) Department,
Secretariat,
Chennai - 600 009.
2. The District Collector,
Salem District, Salem.
3. The Land Acquisition Officer-cum-
District Revenue Officer, Salem.
4. The Chief Engineer (H), Highways Projects,
Integrated Chief Engineer's Complex,
H.R.S. Campus, 76, Sardar Patel Road,
Guindy, Chennai-600 025.
5. The General Manager,
Southern Railway,
Chennai - 600 003.
6. The Deputy Chief Engineer (Constructions),
Southern Railway,
Salem.

+2ccs to Mr.S.Raveekumar , Advocate SR.No. 87552
+2ccs to Mr.P.T.Ramkumar , Advocate SR.No. 87132
+1 CC TO GOVERNMENT PLEADER SR.NO. 87461

W.P. Nos. 6094 & 6095 of 2018
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A.SK(10/01/2019)

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