

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.02.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

W.P.No.10697 of 2015
and
W.P.M.P.No.2 of 2015

1. S.Prem Kumar
2. Balammal
3. Gantha Mary
4. C.Dhanammal
5. Ezhumalai S/o. Pachiyappan
6. Immanuvel
7. M.Kumar
8. Krishnakumar
9. V.Suseela
10. S.Jeeva
11. Lakshmi Naidu
12. Revathi
13. Ezhumalai
14. Ravichandran
15. Ponnan

...Petitioners

Versus

1. The Secretary to the Government of Tamil Nadu,
Department of Highways and Minor Ports,
Fort St.George,
Chennai.
2. The District Collector,
Thiruvallur District,
Thiruvallur.
3. The District Revenue District,
Thiruvallur District,
Thiruvallur.
4. The Divisional Engineer,
Department of Highways,
Project Division - II,
Chennai - 18.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a issuance of a Writ of Certiorari calling for the records of the first respondent in G.O.Ms.No.251 Highways and Minor Ports (HW2) dated 31.12.2013 of the first respondent and quash the same.

For Petitioners : Mr.I.Paranthamen

For Respondents : Mr.M.Karthikeyan,
Additional Government Pleader

O R D E R

This Writ Petition is filed seeking to quash the G.O.Ms.No.251 Highways and Minor Ports (HW2) dated 31.12.2013 issued under Section 15(1) of the Tamil Nadu Highways Act, 2001 (hereinafter referred to as "Act, 2001"). All the petitioners are residents of No.117, Poongavanthamman Koil Street, No.87, Veppampattu, Thiruvallur District. They were served with Notice under Section 15(2) of the Act, 2001 which were affixed indicating the intention of the Government to acquire the land under the provision of Act, 2001, for the purpose of constructing the bridge over a Railway Line. Necessary publication through newspapers were also issued in October and November, 2015. Responding to the said Notice, the petitioner has also preferred their objections. But ignoring the same, the Government have notified the petitioners' land and others for acquisition under Section 15(1) of the State Highways Act which is now impugned in this case without adequately considering the merit of the objections of the various petitioners before passing the notification. As per the proposed design, one end of the Railway Over Bridge will land in Thirunindravur Lake, a prominent water body in that area, on which depends a vast stretch of agricultural lands for irrigation. This would mean that the proposed cannot be constructed or utilized without endangering the water body. This apart, there is another Railway Over Bridge, some 400 metres away from the place where the proposed bridge is to lake. On this set of facts the notification under Section 15(1) of the Act, 2001 is challenged.

2. In the counter affidavit filed by the respondents, it is broadly stated that the procedural formalities have been complied with before issuing Notice under Section 15(1) of the National Highways Act. The whole project is a joint venture between the Government and the Railways. The Railways has completed that portion of the over-bridge that runs across the Railway Line and that only approach to the said bridge from either side alone required to be constructed for which lands are acquired.

3. The learned counsel for the petitioners essentially contended that there is a bridge some 400 metres away from the present place where the bridge is being constructed. Secondly, the project is likely to affect the Thirunindravur Lake on the one side, and several residents on the other side, of who petitioners are few and they will be displaced by the proposed venture.

4. Mr.M.Karthikeyan, the learned Additional Government Pleader submitted that about 1/3rd of the project is already completed and the considerable amount of the public funds has already been pumped for the construction of the over bridge across the Railway Lines and this cannot be let to go wasted. Secondly, the existing over bridge which the petitioners referred to is located about a kilometer away from the proposed Bridge. Thirdly, it is the administrative policy of the Government that large section of public is benefited by this project and the public interest involved outweighs the individual interest to which the petitioners are entitled to. Fourthly, the design pertaining to the over bridge is experts business and that this Court may not make it justiciable. Finally, that the award would be passed in terms of the Central Act 30 of 2013.

5. On evaluating the rival submissions placed before this Court, this Court finds considerable merit and substance in the submission of the respondents. The submission of the learned Government Advocate shows that a portion of the bridge has been constructed across the Railway line at considerable cost that was met from and out of public funds. Again it is for the Government to decide where the bridge should come up.

8. Having said with two aspects stand out:

- a) The petitioner says that the proposed design for construction is likely to endanger a water body which would irrigation and allied utility in the locality.
- b) how compensation would be paid?

9. As to the first point, the learned Additional Government Pleader has assured the Court that no part of the water body would be affected by the proposed construction in order that its extent might be reduced, and its utility too might diminish. He made a further statement, instructed by Mr.A.Chandrasekaran, Assistant Divisional Engineer (Highways), Projects, Chennai, whose presence is recorded by this Court, that no portion within the lake is going to be utilized. This Court however makes it clear, if, in case, any portion of the lake is likely to be used for completion of the project, then no part of the lake shall be filled, only necessary pillars can be put up for supporting the bridge. As to the second point raised, Section 105A mandates that in the matter of payment of compensation, re-settlement,

rehabilitation, the provisions of the Central Act cannot be diluted.

10. This Court has already indicated that the Land Acquisition Authority pass an award in terms of the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 (Central Act 30 of 2013), as Section 105-A(2) thereof telescopes the benefits Central Act 30 of 2013 offer to the Land owners to those whose lands are acquired under the provisions of Act, 2001.

11. Accordingly, this Writ Petition is disposed of in the manner indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

mrr

To

1. The Secretary to the Government of Tamil Nadu,
Department of Highways and Minor Ports,
Fort St.George,
Chennai.
2. The District Collector,
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Thiruvallur.
3. The District Revenue District,
Thiruvallur District,
Thiruvallur.
4. The Divisional Engineer,
Department of Highways,
Project Division - II,
Chennai - 18.

+1cc to the Government Pleader, S.R.No. 15395

+1cc to Mr.E.P.SENNIYANGIRI, Advocate, S.R.No. 14429

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KGK(CO)

TR(10/04/2018)