

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 12.10.2018

Judgment Pronounced on : 16.11.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.Nos.4522,10428,10430,11268,11269,11270,11422,7251,8418,8419,8420,8421,8790,8960,8961,9129,9130,9131,9132,9133,9134,9209,9210, 9211, 9212 & 9213 of 2012

and

M.P.No.2 & 3 of 2012 in W.P.No.4522 of 2012 and M.P.Nos.1 and 2 of 2012 in W.P.Nos.10428 and 10430 of 2012 and M.P.Nos.1 and 2 of 2012 in W.P.Nos.11268 to 11270 of 2012 and M.P.Nos.1 and 2 of 2012 in W.P.No.11422 of 2012 and M.P.Nos.1 and 2 of 2012 in W.P.No.7251 of 2012 and M.P.Nos.1 and 2 of 2012 in W.P.Nos.8418 to 8421 of 2012 and M.P.Nos.1 and 2 of 2012 in W.P.No.8790 of 2012 and M.P.Nos.1 and 2 of 2012 in W.P.Nos.8960 and 8961 of 2012 and M.P.Nos.1 and 2 of 2012 in W.P.Nos.9129 and 9134 of 2012 and M.P.Nos.1 and 2 of 2012 in W.P.Nos.9209 and 9213 of 2012 in all connected Miscellaneous Petitions.

1.T.K.Rajendran	... Petitioner in WP.No.4522/2012
2.Selvaraj	... Petitioner in WP.No.7251/2012
3.Pandian	... Petitioner in WP.No.8418/2012
4.Sarojini	... Petitioner in WP.No.8419/2012
5.Raju	... Petitioner in WP.No.8420/2012
6.Valliammal	... Petitioner in WP.No.8421/2012
7.Arumugham	... Petitioner in WP.No.8790/2012
8.Sakkubai	... Petitioner in WP.No.8960/2012
9.Chakkaravarthy	... Petitioner in WP.No.8961/2012
10.Radhakrishna	... Petitioner in WP.No.9129/2012
11.Parthasarathy	... Petitioner in WP.No.9130/2012
12.Ravikumar	... Petitioner in WP.No.9131/2012
13.Ramalingam	... Petitioner in WP.No.9132/2012
14.Ramakrishnan	... Petitioner in WP.No.9133/2012
15.Samsudeen Begum	... Petitioner in WP.No.9134/2012
16.R.Nagarajan	... Petitioner in WP.No.9209/2012
17.Babu	... Petitioner in WP.No.9210/2012
18.P.Seenivasan	... Petitioner in WP.No.9211/2012
19.Vijaya	... Petitioner in WP.No.9212/2012
20.Ravichandran	... Petitioner in WP.No.9213/2012
21.A.Subramanian	... Petitioner in WP.No.10428/2012
22.Parthasarathy	... Petitioner in WP.No.10430/2012
23.Mariamamma	... Petitioner in WP.No.11268/2012
24.Kamakottiammal	... Petitioner in WP.No.11269/2012
25.Seshadiri	... Petitioner in WP.No.11270/2012
26.Loganathan	... Petitioner in WP.No.11422/2012

-Vs-

1.The Secretary to Government,
Highways Department,
Fort St.George, Chennai-9.

2.The District Collector
Kancheepuram.

3.The Special Tahsildar(L.A.)
Inner Ring Road Scheme
Chrompet, Chennai-44.

..RESPONDENTS 1 TO 3 IN ALL WPS.

4. The Divisional Engineer
Highways Department
Chennai.

... Respondent No.4 in all W.Ps.
Except WP.NO.4522/2012

5 The Commissioner,
Pallavaram Municipality,
Pallavaram.

... 4th Respondent in WP.No.4522/2012
and R5 in All WPS.

Prayer in WP.No.4522 of 2012 :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the impugned notice issued by the third respondent in No.RC.148/09 dated 22.12.2011 and quash the same. [Prayer amended as per order dated 12.10.2018 in WMP.No.30814 of 2018 in WP.No.4522 of 2012]

Prayer in WP.No.7251 of 2012 :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the file relating to the 1st respondent herein in Sub-Section (1) of Section 15 of the Tamil Nadu Highways Act 34 / 2002, was published in the Highways Department at Page No.125 - 127 Part-II Section 2 [No.10] of the Extraordinary Tamilnadu Government Gazette dated 16.03.2011 in respect of the petitioner building and quash the same and direct the respondents to restrict the acquisition to 5 feet on either side of the existing 20 feet Radha Nagar Main Road, Hamlet of Kullanchavadi, Chrompet, Chennai-44.

Common Prayer in WP.Nos. 8418 to 8421, 8960, 8961, 8790, 9129 to 9134, 9209 to 9213, 10428, 10430, 11268 to 11270, 11422 of 2012 :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the file relating to the impugned notification issued and published by the 1st respondent herein on 16.03.2011 in Page No.125 - 127 Part-II Section 2[No.10] of the Extraordinary Tamilnadu Government Gazette under Sub-Section (1) of Section 15 of the Tamil Nadu Highways Act 34 / 2002, and the consequent notices relating thereto, in respect of the petitioners land & building at Radhanagar Main Road, Hamlet of Kullanchavadi, Chrompet and quash the same.

For Petitioner : Ms.D.Malarvizhi
(in all Wps)

For Respondents : Mr.C.Thirumaran
(in all Wps) Special Government Pleader
for State

COMMON ORDER

Barring W.P. 4522 of 2012, this batch of 26 petitions are filed by the residents of Radha Nagar Main Road at Kullanchavadi within Pallavaram Municipality, for issuing a writ of Certiorari and Mandamus to quash the notification issued under Sec.15(1) of the Tamil Nadu Highways Act, 2001. In WP. No.4522 of 2012, the prayer is for quashing a notice under Section 16(2) of the same Act.

2. The facts on the foundation of which the petitioners have approached this Court have a common thread: The petitioners are the residents of Radha Nagar Main Road and have been living there for several years. Radha Nagar Main Road is a East-West Road, and joins a north-south running Service Road on its western extremity perpendicularly (more like the alphabet 'T', tilted anti-clock wise by ninety degrees).

Parallel to the Service Road runs a railway track. To the further east of the railway track runs the GST Road. For crossing the railway track, there is a manual level-crossing which connects the aforesaid Radha Nagar Main road- Service Road and the GST Road. This level crossing is right opposite to Radha Nagar Main Road on the other side of the Service Road.

3.1 The Radha Nagar Main Road is 20 feet wide. While so, the Pallavaram Municipality has passed a resolution for forming a sub-way beneath the railway track having a width of 27 feet. Out of this for a width of 7½ feet a service road is proposed to be formed. Acting on this resolution, the Government had issued publication purported to be under Section 15(2) of the Act in the Tamil Daily "Thinathanthi" dated, 04.3.2010, of its proposal to acquire the lands of the petitioner. The extent proposed to be acquired for a stretch of land for a width of 30 feet. The notice invited objections from the owners of the land for the intended acquisition of lands for the formation of the sub-way. All the petitioners appeared for an enquiry under Section 15(2) and filed their objections. However, no enquiry took place under Section 15(3) of the Act, but without following the procedure, the Government has come up with a notification under Sec. 15(1), declaring its final intention to acquire the respective properties of the petitioners. While the petitioners objected to the entire acquisition of lands for a width of 30 ft., they would now rest contented to limit their objections to 10 ft, as there is no real need to

acquire the remaining 20 ft.

3.2 The area intended to be acquired involves demolition of schools, hospitals and temples. There are over 250 students studying in the locality and temple has been there for over 100 years now. It is in this background, the Land Acquisition Authority has served notice under Sec.16(2) of the Act on all the petitioners for surrendering the possession of the property. Now, the petitioners would rush to the Court challenging the acquisition/the notice issued under Sec.16, as the case may be, chiefly on the following grounds:

- That while the statute requires a personal notice under Section 15(2) be served on the land owners, no such notice was given. Instead, only a public notice through a newspaper publication alone was issued.
- While the petitioners have appeared to present their objections in response to the public notice under Section 15(2) of the Act, no enquiry as contemplated under Section 15(3) of the Act r/w. Rule 5 of the Tamil Nadu Highways Rules, 2003, has taken place. It is only after an enquiry as contemplated under Rule 15(3), the Government can proceed to declare its intention to acquire the lands under Section 15(1) of the Act. Since the former had not taken place, the notification issued under Sec.15(1) was bad in law.
- While the notification indicated that the acquisition is for laying a pedestrian sub-way, the notice issued under

Section 16(2) refers to it as one for the construction of

an over-bridge.

- Thirdly, the acquisition does not take into account that the locality has a population of around 1000 families with several school children, and all of who would be put to considerable inconvenience.

4.1 In the counter filed for the Government, it is alleged that the Government have accorded administrative sanction for the construction of a pedestrian sub-way bridge near Chrompet Station at the stated location. The Highways Department had then prepared a land plan schedule for acquiring 1,929 sq.mtrs for the said project. Following this, the Collector, (who has been empowered to issue notice under Section 15(2) of the Act), has issued it on 29.9.2003. However, the paper publication as required came to be published on 04.3.2010 and an enquiry was scheduled to be taken place on 29.3.2010 for receiving objections from the owners of the land to the intended acquisition. All the petitioners filed their objections, some of them individually, and most of them through their Residence Association, and requested that during the acquisition, the demolishing of their buildings be avoided. In the meantime, on 29.6.2007, the Pallavaram Municipality has passed a resolution and requested the Government to approve the change of nomenclature of the proposed sub-way. The objections of the petitioners were partly accepted by the Government, and to that extent it issued a notification dated 19.12.2011. Based on the objections, the width of the proposed Service Road was reduced

to 4.0 mtrs from the originally proposed 5.5 mtrs on either side, and consequently the total extent proposed to be acquired was reduced from 1,929 sq.mtrs. to 1,528.5 sq.mtrs.

4.2 Following this, on 16.3.2011, a notification under Section 15(1) was published. The compensation amount has been determined and none of the petitioners have claimed compensation, as a result of which, compensation amount was deposited under Section 23 of the Act.

4.3 Thereafter, on 21.12.2011, the Land Acquisition Authority had required the petitioners through separate notices issued under Section 16(2) of the Act, to surrender possession. The allegation of the petitioners that they were not served with personal notices under Sec.15(2) of the Act is denied. All of them were served with a printed form of notices separately, wherein the purpose for the acquisition is indicated as for the formation of a sub-way. Only in the notice issued under Sec.19 for the purpose of determining the award of compensation payable, by mistake the purpose of the acquisition was indicated as "Over Bridge".

4.4 So far as the need to hold an enquiry under Sec.15(3) is concerned, since none of the petitioners have raised an objection in nature which requires an enquiry under Sec.15(3), no need arose for holding one.

5. The Pallavaram Municipality too has filed its counter and it has supported the case of the petitioners.

6. Heard Mr.C.Thiruman, learned Special Government Pleader for the respondents-State. In the course of hearing, the Land

Acquisition Authority has produced the files which intends to show that the notices under Sec. 15(2) have been served personally on all the petitioners.

7. It is in this background, the learned counsel for the petitioners argued :

(a) There are following two categories of individuals on whom notices under Section 15(2) issued was not on their names and consequently the inception of the land acquisition is faulty:

(i) In W.P.Nos.8960/2012, 9210/2012, 9212/2012, 9213/2012, 11268/2012 and 11422/2012, notice was issued in the name of dead persons.

(ii) In the case of WP.Nos.9130 of 2012, 9134 of 2012 and 10430 of 2012, notices were issued in the names of predecessors-in- title of the present petitioners and no notice was issued in their names.

(b) In the case WP.Nos.9211 of 2012 and 9133 of 2012, there was no notification under Sec.15(1) of the Act in the names of the petitioners. This is yet another illegality which cannot sustain the acquisition.

(c) There is considerable confusion as to the object of acquisition. While in the public notice given through newspapers, the object for acquisition was indicated as construction of a pedestrian sub-way, in the printed form of notice issued under Sec.15(2), it was mentioned as an over-bridge. However, in the Gazette notification issued under Sec.15(1) declaring the intention or the purpose for acquisition, it is once again mentioned as a

of the Act for participating in the enquiry for passing the award, the object of the acquisition was indicated as an over bridge. This implies that the Government has no consistent view as to the object of acquisition and an uncertain object cannot legitimately supply reason for an acquisition. Petitioners' Constitutional right to their property can be interfered with only in the manner the statute prescribes, and uncertainty in stating the object of acquisition manifests the hidden arbitrariness in the acquisition process and consequently, the acquisition should fail.

(d) No enquiry under Sec.15(3) of the Act read with Rule 5 was held, and this is a precondition for notifying the intention to acquire land under Sec.15(1) of the Act. This is yet another ground on which the acquisition should fail.

(e) When compared to the present location, there are better options available to the Government, and one of the ideal place to locate the proposed subway is on the western end of Vaishnava College Road that runs parallel to the Radha Nagar Main Road to its north.

8. In response, the learned Special Government Pleader has argued :

(a) The confusion or uncertainty said to cloud the object of acquisition is hyped, since none of the petitioners at no point of time have complained that they were confused over the object for acquiring their property. None of

the petitioners, including those who now complain that notices were not served in their names, have filed their objections/representations against acquisition, either individually or through their Residents Association, a choice they made, have offered their objection only to the formation of a subway. The contention on this point therefore stands invalidated by the very conduct of the parties, and they have no locus standi to put forth this contention. When parties participated and filed their objections with a clarity of understanding as to the object of acquisition, they cannot take exceptions as to what appears to be an immaterial inconsistency. Reliance was placed on the authority in *Special Deputy Collector Vs. J.Sivaprakasam & Others* [2011 (1) CTC 608].

(b) The only objection the petitioners have raised was that they would be without their means of livelihood. But this has been considered by the Government and it is only thereafter, the notification under Sec.15(2) was issued. So far as the notices issued for participation in the enquiry for passing the award under Sec.19 is concerned, while notices were individually served on all the petitioners, only three have participated in the award enquiry. It is thereafter, Vide notice dated 21.12.2011, the Land Acquisition Authority required the petitioners to surrender possession of their respective properties. It is only thereafter, the petitioners have approached this Court and obtained an order of stay.

(c) So far as the argument on alternate site is concerned, firstly, this was not a ground raised in the writ petitions. Secondly, there was another project linking a sub-way which has since been formed under the GST Road which gets connected to the sub-way now proposed to. Considerable portion of that project is already over and there is no way that the proposed present alignment can be changed. Thirdly, this is an issue which cannot be a subject of judicial review.

(d) The allegations that in the cases of petitioners mentioned in paragraph 8(a) above, personal notices under Section 15(2) was issued on the predecessors in title chiefly because the names of the registered owners were not mutated in the revenue records. As already indicated all the petitioners involved in those cases have also have given their objection under Section 15(2), and hence no right of these petitioners is violated. After all, the notice under Section 15(2) is only preliminary in nature and inasmuch as the parties who are likely to be affected by the acquisition have themselves appeared before the Acquisition Authority, it is immaterial.

(e) As to the allegation that the notification under Sec.15

(1) was not issued in the names of the petitioners in WP.No.9211 of 2012 & 9133 of 2012 is concerned, firstly this is an invention which the parties chose not to plead. Secondly, the statement is only partly true, yet no prejudice was caused to any of the petitioners in

these two cases, as in the subsequent award-enquiry the petitioners have participated. In the case of the petitioner in W.P. 9211 of 2012, petition claims that he was entitled to the property in S.F.Nos:92 and 93. However, he was the registered owner of the property in S.F.No:92 alone. In the notification under Sec.15(1) of the Act, instead of referring to the petitioner by name, he was referred to as 'registered owner'. In W.P. 9133 of 2012, notification was issued in the names of a certain Govindaraju and three others, but during the award-enquiry petitioner himself appeared and claimed compensation on the strength of a Will, and he has been awarded compensation.

9. The primary argument which consumed considerable time during hearing was on the advisability of constructing the subway at an alternate locality. As rightly argued by the learned Special Government Pleader, this is beyond the scope of judicial review, unless the acquisition itself is tainted in malafide. There however, is no allegation of malafide exercise of administration power, and therefore this ground fails without a need for scrutiny of merits. At the end of the day, the Government, and the experts who advice it, are the best judges in conceiving a project, its design and location, and the Courts cannot interfere with their judgement easily. And today, another project linking the sub-way beneath the GST Road with the present project has come up, and that the other project has been completed, and therefore, the

entire project has reached a stage from where it cannot be rolled back.

10. The next point to be considered is the allegation of the petitioners that individual notices under Sec.15(2) were not served on the petitioners and that enquiry under Sec.15(3) has not taken place. As to the former, the official file on acquisition is made available and it disclosed that personal/individual notices indeed have been served, and that the petitioners pretend innocence when they have made, what this Court considers as a false statement. They have also raised their objections either individually or through their Association, but that is the choice they make as to how they intend to respond to the notices. Turning to the next allegation that enquiry under Sec.15(3) of the Act was not held in *Titanium Equipment & Anode Manufacturing Co. Ltd. Vs. State of Tamil Nadu* [2018 (4) CTC 814], this court has had an occasion to consider the same and has held that no rights of the parties are decided in this enquiry and the scope of the enquiry is limited to collecting the materials that are necessary and relevant for the Government to take a decision if it should proceed to notify its intention to acquire under Sec.15(1) of the Act. This enquiry is akin to an enquiry under Sec.5-A of the Land acquisition Act, 1894. Necessarily this argument shall fail.

11. Here it must also be added that this argument shall fail for yet another reason: All the petitioners have not only have they participated in the enquiry under Sec.15(2), but

have also received notices under Sec.19 for participating in the enquiry for passing the award. That many of them have absented or chosen not to participate in the said enquiry might be their choice, but the fact remains, that they knew that it was happening. It was only when they were issued notices under Sec.16 for surrendering the possession, issued after the passing of the award, did they approach this Court with these petitions, challenging the very acquisition. Plainly it is a strategy that appears to have been developed long after acquisition proceedings have crossed all stages. There is an obvious delay and latches on the part of the petitioners in approaching the Court, which literally, consumes any alleged cause for their current action.

12. One point argued was that there is uncertainty in the object for acquisition. This allegation, if true, has the potential to unsettle the acquisition proceedings. However, the materials available before this court do not suggest one. First, in the public notice through newspaper publication, the purpose for acquisition was stated as for formation/construction of a subway. In their response under Sec.15(2), the petitioners did refer to this. Therefore, at that stage they did not have any confusion. However, in the notice for the award-enquiry under Sec.19, it was referred to as 'overbridge'. What is significant is that at that stage the petitioners are entitled to only compensation, and hence any mistake in referring to the object of acquisition is immaterial. And there is no grievance that all or any of the

petitioners have not been invited for an enquiry under Sec.19 of the Act. Here again the latches stares on the petitioners, and this court necessarily has to reject this argument.

13. One last point to be considered is that the notices under Sec.15(2) have not been issued in few cases and that in two other cases notification under Sec.15(1) was not issued. This too has to fail, since in none of the instances the petitioners have not seen to have been prejudiced in that all have them have preferred their objection to notices under Sec.15(2) of the Act, or have participated in the enquiry under Sec.19 of the Act, as the case may be.

14. In the result, all the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Ds

Sd/-

Assistant Registrar (CS)

//True copy//

Sub Assistant Registrar

To:

- 1.The Secretary to Government,
Highways Department,
Fort St.George, Chennai-9.
- 2.The District Collector
Kancheepuram.
- 3.The Special Tahsildar(L.A.)
Inner Ring Road Scheme
Chrompet, Chennai-44.
4. The Divisional Engineer
Highways Department
Chennai.

5. The Commissioner,
Pallavaram Municipality,
Pallavaram.

+1cc to Mr.D.MALARVIZHI,, Advocate SR.No.78513

+1cc to Government Pleader SR.No.79190

KR(18/01/2019)

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