

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.05.2018

C O R A M

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.No.11902 of 2018

and

W.M.P.Nos.13897 & 13898 of 2018

C.Sundarapandian

.....

Petitioner

Vs.

1.The Chairman

National Highways Authority of India(NHAI)

No.G 5&6, Sector-Dwarka

New Delhi - 110 075.

2.Project Director

National Highways Authority of India(NHAI)

(Ministry of Road Transport and Highways)

No.19, Govindasamy Nagar

Vazhudha Reddy Post

Villupuram - 605 401.

3.The Competent Authority/Special District

Revenue Office(land acquisition)

National Highways No.45-A

District Collectorate, Cuddalore.

4.The District Collector

District Collectorate

Cuddalore.

सत्यमेव जयते

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Respondents

PRAYER Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondents in the impugned notification under Section 3A(1) of National Highways Act, 1956 (Central Act 48/1956) as amended by National Highways (Amendment) Act, 1997 (Central Act No.16/1997) and published on 18.03.2017 in Daily Thanthi Tamil Newspaper and under Section 3D and 3G(3) of National Highways Act 1956 (Central Act 48/1956) as amended by National Highways (Amendment) Act, 1997 (Central Act No.16/1997) and published on 23.02.2018 in Daily Thanthi Tamil Newspaper for acquisition of lands for formation of four lane in

Cuddalore district, National Highways No.45-A, from Km 37/450 to 38/650; Km 39/950 to Km 42/350; Km 47/225 to Km 48/400 and Km50/610 to Km 108/860, Villupuram-Puducherry-Cuddalore-Nagapattinam and in proceedings No.Na.Ka.They.Ney.Ni.A./A1/33/2016 dated 14.11.2017 on the file of the 3rd respondent and quash the same.

For Petitioner : Mr.M.Vijayakumar

For Respondents : Mrs.S.R.Sumathy [For RR1 & 2]

Mrs.P.Rajalakshmi [For RR3 & 4]
Additional Government Pleader

O R D E R

The relief sought for in this writ petition is to call for the records on the file of the respondents in the impugned notification under Section 3A(1) of National Highways Act, 1956 (Central Act 48/1956) as amended by National Highways (Amendment) Act, 1997 (Central Act No.16/1997) and published on 18.03.2017 in Daily Thanthi Tamil Newspaper and under Section 3D and 3G(3) of National Highways Act 1956 (Central Act 48/1956) as amended by National Highways (Amendment) Act, 1997 (Central Act No.16/1997) and published on 23.02.2018 in Daily Thanthi Tamil Newspaper for acquisition of lands for formation of four lane in Cuddalore district, National Highways No.45-A, from Km 37/450 to 38/650; Km 39/950 to Km 42/350; Km 47/225 to Km 48/400 and Km50/610 to Km 108/860, Villupuram-Puducherry-Cuddalore-Nagapattinam and in proceedings No.Na.Ka.They.Ney.Ni.A./A1/33/2016 dated 14.11.2017 on the file of the 3rd respondent and quash the same.

2.The learned counsel appearing on behalf of the writ petitioner strenuously contended that the right of property of the writ petitioner has been taken away without following the procedure as contemplated under the National Highways Act 1956 (Central Act 48/1956) as amended by National Highways (Amendment) Act, 1997 (Central Act No.16/1997).

3.The learned counsel for the petitioner is of an opinion that the objections to be submitted by the petitioner must be considered at the first instance. However, the detailed objections already submitted by the writ petitioner has not been considered by the respondent at all. Thus, the notification itself is liable to be scrapped. The learned counsel proceeded by stating that he is the owner of the land and the respondents have now taken a step to lay a public road and therefore, his

objections ought to have been considered at the first instance. It is further submitted that the alternate routes are available and the respondents are acting with an ulterior motive to take away the lands available with the writ petitioner.

4. The learned counsel appearing on behalf of the respondents states that already a notification has been issued under Section 3A(1) of the National Highways Act 1956 (Central Act 48/1956) as amended by National Highways (Amendment) Act, 1997 (Central Act No.16/1997) and the procedures are scrupulously followed by the competent authorities as there is no violation under the said Act. Thus, the objections already submitted by the petitioner would be considered by the authorities within the time, if any, granted by this court.

5. Let us now look into the provisions of the National Highways Act 1956 (Central Act 48/1956) as amended by National Highways (Amendment) Act, 1997 (Central Act No.16/1997) :

"Section 3: Definitions.-In this Act, unless the context otherwise requires:

(a) "competent authority" means any person or authority authorised by the Central Government, by notification in the Official Gazette, to perform the functions of the competent authority for such area as may be specified in the notification;

(b) "land" includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.

Section 3A: Power to acquire land, etc: (1) Where the Central Government is satisfied that for a public purpose any land is required the building, maintenance, management or operation of a national highways or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land;

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.

Section 3B: Power to enter for survey, etc.-On the issue of a notification under subsection (1) of section 3A, it shall be lawful for any person, authorised by the Central Government in this behalf, to-

(a) make any inspection, survey, measurement,

valuation or enquiry;
(b) take levels;
(c) dig or bore into sub-soil;
(d) set out boundaries and intended lines of work;
(e) mark such levels, boundaries and lines placing marks and cutting trenches; or
(f) do such other acts or things as may be laid down by rules made in this behalf by that Government.

Section 3C:Hearing of objections.-(1) Any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation: For the purposes of this sub-section, "legal practitioner" has the same meaning as in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961).

(3) Any order made by the competent authority under sub-section (2) shall be final.

6. On a perusal of the above provisions cited supra, this court is of an opinion that the competent authorities are bound to issue a notification under Section 3(A) of the Act and after complying the provisions of Section 3(B) they are duty bound to consider the objections of the owners /persons concerned under Section 3(C) of the Act. What is under challenge in this writ petition is the notification issued under Section 3(A). Thus, the authorities have to proceed further as per the procedures contemplated under Section 3(B) of the Act and thereafter, hear the objections of the writ petitioner under Section 3(C) of the Act.

7. The learned counsel for the writ petitioner states that the petitioner had already submitted his objections to the competent authorities dated 06.04.2018.

8. If any such representations /objections are received from

the petitioner, then the competent authorities are bound to consider the same as per the procedures as contemplated under the Act. In this regard, the petitioner at liberty to submit any further representation or additional grounds to the competent authorities within two(2) weeks from the date of receipt of a copy of this order. If any such additional grounds are furnished the same also should be considered along with the objections / representations already submitted by the writ petitioner.

9.However, this being the legal principles are being followed and the right of property is subject to the acquisition laws enacted by the State or the Union. The authorities competent undoubtedly to follow the procedures contemplated under the Act. However, in the present writ petition the notification issued under Section 3A is under challenge and therefore, the authorities hereafter has to consider the objections and take a decision and proceed with the acquisition process in accordance with law, if necessary, by providing a personal hearing to the writ petitioner.

10.With these observations, this writ petition stands dismissed. Consequently, connected miscellaneous petitions are closed. However, there is no order as to costs.

Sd/-

Assistant Registrar (COMP)

//True copy//

Sub Assistant Registrar

may a

To

1.The Chairman

National Highways Authority of India (NHAI)
No.G 5&6, Sector-Dwarka
New Delhi - 110 075.

2.Project Director

National Highways Authority of India (NHAI)
(Ministry of Road Transport and Highways)
No.19, Govindasamy Nagar
Vazhudha Reddy Post
Villupuram - 605 401.

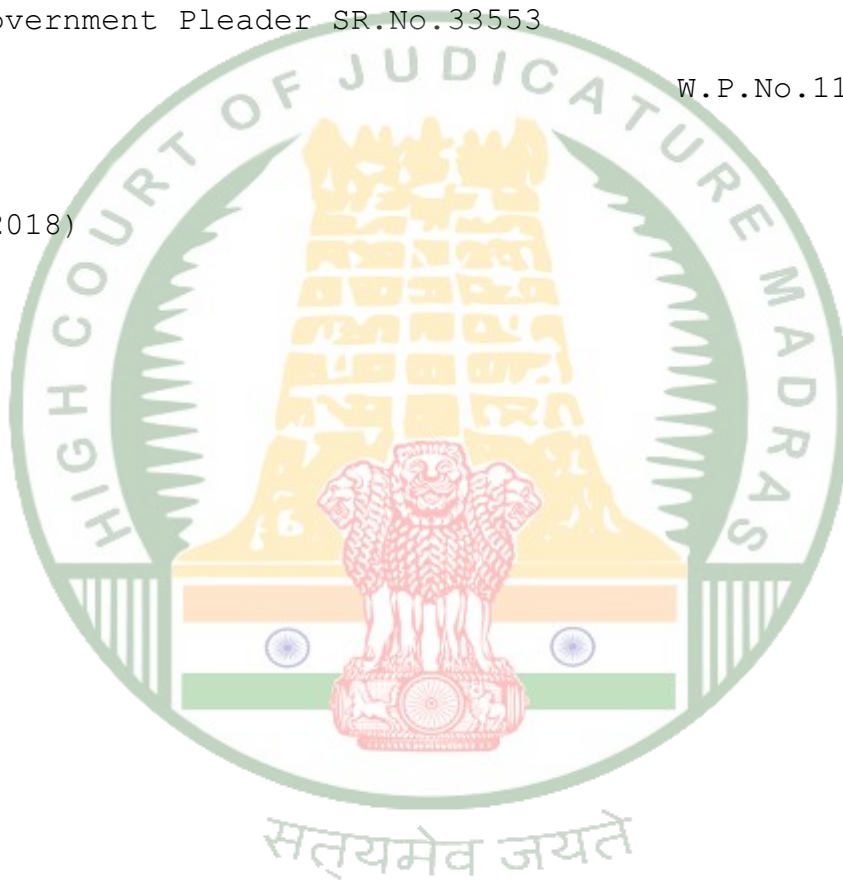
3.The Competent Authority/Special District
Revenue Office(land acquisition)
National Highways No.45-A
District Collectorate, Cuddalore.

4.The District Collector
District Collectorate
Cuddalore.

+1cc to Mr.M.Vijaya Kumar, Advocate SR.No.33307
+1cc to Government Pleader SR.No.33553

W.P.No.11902 of 2018

CP(CO)
GN(15/05/2018)



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