

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.27087 of 2015
and M.P.No.2 of 2015
and WMP.No.522 of 2016

N.Ramamoorthy

... Petitioner

-Vs-

- 1.The Principal Secretary to Government
Highways and Minor Ports Department
Fort St.George
Chennai - 600 009.
- 2.The District Collector
Chennai District
Singaravelar Maaligai
Chennai - 600 001.
- 3.The Special Deputy Collector (Land Acquisition)
Tamil Nadu Urban Development Project-III
15, M.G.Nagar Main Road
Chennai at Poonamallee
Chennai - 600 056.
- 4.The Chief Engineer (Metro)
Highways Department
Alandur
Chennai - 600 016.
- 5.The Divisional Engineer (Highways)
C.M.D.A., Division-IV
Chennai - 600 016.

- 6.N.Ethiraj
- 7.R.Padmavathy
- 8.B.Devaki
- 9.V.Shantha
- 10.N.Soundaravalli
- 11.Tamilselvi

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records pertaining to the issue of the notice under Section 15(2) of the Tamil Nadu Highways Act, 2001 (Act 34

of 2002) in Na.Ka.No.1565/2012/E1 dated 7.11.2013 published in Tamil Newspaper "Namadhu MGR" dated 09.11.2013 and the notification under Section 15(1) of the Tamil Nadu Highways Act 2001 (Act 34 of 2002) in G.O.Ms.No.143 Highways and Minor Ports (HW-1) dated 27.11.2014 published in Tamil Nadu Government Gazette dated 17.12.2014 in respect of the land belonging to the petitioner and the respondents 6 to 11 in Block No.71, T.S.No.35 Part measuring 0.02.11.0 H.A.sq.mtr. and in Velachery Village, Mambalam-Guindy Taluk, Chennai District and quash the same.

For Petitioner : Mr.M.S.Subramanian

For Respondents : Mr.Akhil Akbar Ali

Government Advocate [for RR1 to 5]

Mr.R.Arunkumar [for R6]

Mr.K.Vinayagamoorthy [for R9]

Mr.T.P.Sekar [for R11]

R7 - Vacated

R8, R10 - No appearance

ORDER

The petitioner has filed this writ petition praying for issuance of writ of certiorari, to quash the notice issued under Section 15(2) of the Tamil Nadu Highways Act, 2001 (Act 34 of 2002) [hereinafter referred to as the Act] in Na.Ka.No.1565/2012/E1 dated 7.11.2013 and the notification under Section 15(1) of the Tamil Nadu Highways Act 2001 (Act 34 of 2002) in G.O.Ms.No.143 Highways and Minor Ports (HW-1) dated 27.11.2014 published in Tamil Nadu Government Gazette dated 17.12.2014, with regard to the petitioner's property.

2.1 It is a case where a plot of land in Survey No.No.362 of Velachery Village originally belonged to a certain Narasimmalu Naicker, now dead, of who the petitioner and the respondents 6 to 11 are the heirs, was sought to be acquired under the provisions of the Tamil Nadu Highways Act, 2001. No personal notice as contemplated under Sec.15(2) was served on them, but notwithstanding the same the petitioner responded to the public notice issued through newspaper and filed his objection. But without inviting the petitioner for an enquiry under Rule 5(3) of the Act, the State proceeded to publish the notification under Section 15(1) of the Act thereby reducing the procedure mandated in law farcical.

2.2 Be that as it may, the Special Deputy Collector(Land Acquisition), the third respondent has sent a communication Vide Na.Ka.No.1565/2912/E1 dated 11.12.2013, in which the third respondent has informed the petitioner that notices under 15(2) of the Act were issued based on the entries in the revenue

records and necessary corrections would be made when notice under Section 15(1) of the Act is issued. That however had not taken place, which implies, the petitioner has lost yet another opportunity to protect his right.

3. In response, the State contends that the procedures are duly complied with.

4. It is apparent from the facts disclosed in the affidavit of the petitioner and that in the counter affidavit of the third respondent and also by the communication of the Special Deputy Collector (Land Acquisition) referred to above, that notice under 15(2) of the Act has not been sent to the petitioner or other heirs of Narasimhalu Naicker, and at any rate given the tenor of the said communication of the Special Deputy Collector, it could not have been sent. Necessarily, when objections are made the minimum the State should have done is to ascertain if the petitioner has a subsisting title over the property with regard to which notice under Section 15(2) of the Act have emanated earlier. It is perhaps for this reason the Special Deputy Tahsildar was seen in a correction-mode when he issued a notice promising to make necessary correction when Sec.15(1) notification was issued. But then he omitted it yet again.

5. As the procedures contemplated under Section 15(2) of the Act has not complied with, there is little option but to quash the notification under Section 15(1) of the Act. Nothing however, precludes the authorities from initiating proceedings for acquisition afresh but in strict adherence to the statutory provisions.

6. Accordingly, this writ petition is allowed. Now that the respondents are put on notice about the addresses of the parties interested in the property the respondents may issue fresh notices to the petitioner and to the respondents 6 to 9 and 11 to the address given in the writ petition. So far as the respondent No.10 is concerned, the notice shall be sent to the address as provided by the learned counsel for the petitioner as below :

N.Soundaravalli
D/o. Narasimhalu Naicker
New No.7, Old No.3, I Floor
Pillaiyar Koil Street
Velacherry,
Chennai - 600 042.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-ii)

//True Copy//

Sub Assistant Registrar

ds

To:

- 1.The Principal Secretary to Government
Highways and Minor Ports Department
Fort St.George, Chennai - 600 009.
- 2.The District Collector
Chennai District
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Chennai - 600 016.

+2cc to Mr.M.S.SUBRAMANIAN, Advocate, S.R.No. 8069
+1cc to the Government Pleader, S.R.No. 9735

W.P.No.27087 of 2015

SVI (CO)
TR(14/02/2018)