

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.17571 of 2017

and

W.P.Nos.18453 to 18457 of 2017

and

W.M.P.Nos.19069, 20026 to 20030 of 2017

and

W.M.P.Nos.29045, 35422 to 35426 of 2017

R.Arivanandham ... Petitioner in W.P.No.17571 of 2007
V.Nagarajan ... Petitioner in W.P.No.18453 of 2017
N.R.Rajadasappan ... Petitioner in W.P.No.18454 of 2017
S.Lakshmanan ... Petitioner in W.P.No.18455 of 2017
S.Pushpa ... Petitioner in W.P.No.18456 of 2017
J.Duraisamy ... Petitioner in W.P.No.18457 of 2017

Vs

1. The Secretary to Government,
State Highways Department,
Fort St.George,
Chennai-600 009.
2. The Chief Engineer,
State Highways, Chepauk,
Chennai-600 005.
3. The District Collector,
Salem District, Salem.
4. The Land Acquisition Officer /
District Revenue Officer,
Collectorate, Salem.

... Respondents

Common Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, forbearing the respondents from demolishing the petitioner's building situated in Door No.841/347, Block No.10, Ward No.28, T.S.No.32/10, and Door No.42/89-A, Block No.1, Ward No.28, T.S.No.23/2, and Door No.14, Block No.9, Ward No.28,

T.S.No.13/4, and Door No.26E/70/69, Block No.10, Ward No.28, T.S.No.32/2B6, and Door No.26-G, Block No.10, Ward No.28, T.S.No.32/2B8, and Door No.840, Block No.10, Ward No.28, T.S.No.32/11 of Pallapatti Village, Salem till passing orders on the petitioner's objection made for the notice Under Section 15 (3) of the Tamil Nadu Highways Act, issued by the 4th respondent in his proceedings No.Na.Ka.9015/2013/P3, dated 07.11.2016.

For Petitioners : Mr.C.Prakasam
For Respondents : Mr.Akhil Akbar Ali
Government Advocate

C O M M O N O R D E R

The petitioners in this batch of cases owns specific parcels of lands in Pallapatti Village, Salem. The details whereof are as under:

W.P.No.	Name of the petitioner	Door No.	Block No.	Ward No.	T.S.No.
W.P.No.17571 of 2007	R.Arivanandham	841/347	10	28	32/10
W.P.No.18453 of 2017	V.Nagarajan	42/89A	1	28	23/2
W.P.No.18454 of 2017	N.R.Rajadasappan	14	9	28	13/4
W.P.No.18455 of 2017	S.Lakshmanan	26E/70/69	10	28	32/2B6
W.P.No.18456 of 2017	S.Pushpa	26-G	10	28	32/2B8
W.P.No.18457 of 2017	J.Duraisamy	840	10	28	32/11

2. All of them are issued with notices under Section 15(2) of the Tamil Nadu Highways Act, 2001. Challenging the same, the petitioners have moved this Court with the present petitions seeking issuance of Writ of Mandamus to forbear the respondents from disturbing their possession over their respective plot of lands. The foundation for their case is their contention that since the commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30/2013), the Tamil Nadu Highways Act, 2001 ceased to have operation and therefore if at all acquisition should be undertaken then it must be only in accordance with the provisions of the Central Act 30/2013.

3. The respondents have filed their respective counters in

the matter. The core of respondents' defence is rooted in Sec.105-A, a Tamil Nadu State amendment to the Central Act 30/2013 which carved an exception to the operation of the Central Act to some of the State laws on acquisition which included the Tamilnadu State Highways Act, 2001.

4. Heard Mr.C.Prakasam, learned counsel for the petitioners and Mr.M.Karthikeyan, learned Additional Government Pleader along with Mr.A.Zakhir Hussain and Mr.Akhil Akbar Ali, learned Government Advocates appearing for the respondents.

5. In the course of submissions, the learned counsel for the petitioners explained to this Court with the aid of a sketch and documents of the acquisition that when they had enough property on the otherside of the road, the Highway authorities have deliberately designed a flyover/ a bridge that would eat away the property of the petitioners, and also raised the issues of non-compliance of Sec.8 of the Tamil Nadu Highways Act, which he argued was a condition precedent for initiating the acquisition proceedings under Section 15. However, the learned counsel toned down his submissions in the face of a strong resistance from the team of law officers of the Government when they argued that the petitioners are attempting to bring in a new case that they have not pleaded, that designing the course of a flyover or a bridge is expert's business and is not justiciable, and at any rate bridge has already been constructed for a substantial length, and submitted that the petitioners would be entitled to fair compensation.

6. Responding the same, the learned Additional Government Pleader and his team of Government Advocates submitted that compensation would indeed to be paid in the spirit of Sec.105-A (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30/2013), which indicate legislation by incorporation.

7. The 2nd and 4th respondents are present and assisted this Court. In the end a certain degree of consensus is reached. What however, needs to be explained is that Sec.105-A(1) read with (2) even though exempts the operation of the Central Act 30/2001, it also declares that in the matter of payment of compensation to the owners of the lands which are acquired under the provisions of the Special State enactments including the Tamil Nadu Highways Act, 2001, there cannot be any dilution of compensation payable or resettlement and rehabilitation as may be required to be provided under the Central Act.

8. In conclusion, this petition allowed with a modification that the land acquisition authority shall issue appropriate notices to the petitioners for holding an enquiry for determining the compensation payable within a period of four

weeks from the date of receipt of a copy of this order, and pass an award within four months in accordance with spirit behind Section 105-A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30/2013), which make relevant the application of provisions intended for payment of compensation and providing rehabilitation or resettlement under Sections 26 to 30 of the said Act. The respondent shall not take possession of the property, or disturb their possession unless at least 50% of the award amount is paid. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

ssn

To

1. The Secretary to Government,
State Highways Department,
Fort St. George, Chennai-600 009.
2. The Chief Engineer,
State Highways, Chepauk,
Chennai-600 005.
3. The District Collector,
Salem District, Salem.
4. The Land Acquisition Officer /
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Collectorate, Salem.

+6 Ccs to Mr.C. Prakasam, Advocate sr
6005, 6004, 6006, 6007, 6008, 6009.

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SP(16/02/2018)

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