

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P.No.19298 of 2018

and

W.M.P.Nos.22703 and 22704 of 2018

M/s.Texmo Precision Castings,  
Rep. by its Managing Partner,  
Mrs.Damayanthi Ramachandran,  
Kovilpalayam, Pollachi Road,  
Coimbatore-642 118.

... Petitioner

Vs

1.The Secretary,  
The Ministry of Road Transport and Highways,  
The Government of India,  
Parivahan Bhavan,  
No.1, Sansad Marg,  
New Delhi-110 001.

2.The Competent Authority and  
Special District Revenue Officer(L.A),  
N.H-47, 67 & 209, Red Field,  
Door No.3, Savarimuthu Chettiar Street,  
Puliakulam, Coimbatore-641 045.

3.The Project Director,  
The National Highways Authority of India,  
No.43, Kongu Nagar, Sowripalayam,  
Coimbatore-641 045.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the 2<sup>nd</sup> respondent herein pertaining to the Notification in Ref. No.1/2017/A1 dated --/03/2018 issued U/s.3A(1) of National Highways Act 1956, concerning acquisition of the petitioner's lands situated in S.F.No.111/1A, 55/3B 2A, 55/3B2B & 55/3B3 with total area of 491 sq mts of Mullapadi Village, Kinathukadavu Taluk, Pollachi Road, Coimbatore District, for the formation of 4/2 laning from Pollachi to Coimbatore Section and as well as the consequential order made in Ref.No.6/2017 dated 25.06.2018 on the file of the 2<sup>nd</sup>

respondent herein and quash the same.

For Petitioner : Mr.P.M.Duraiswamy

For Respondents : Mr. G.Karthikeyan,  
Additional Solicitor General,  
for R1

: Mr.D.Raja  
Additional Government Pleader  
for R2

: Mr.Su.Sreenivasan,  
Standing counsel  
for R3

#### O R D E R

This writ petition has been filed challenging the order passed by the second respondent rejecting the petitioner's objection under Section 3(G)(3) of the National Highways Act.

2. The case of the petitioner in brief is as follows :-

The petitioner is running an industry in the name and style of M/s.Texmo Precision Castings at Kovilpalayam, Pollachi Road, Coimbatore. Earlier, the second respondent issued a notice under Section 3G(3) of the National Highways Act stating that lands to an extent of 659 sq.mts in Survey Nos.111/1A, 55/3B 2A, 55/3B2B and 55/3B3 in Mullapadi Village, Kinathukadavu Taluk, Pollachi Road, Coimbatore District, were needed for a public purpose, namely, widening four lane, building, maintenance, management and operation of the National Highways No.209, in the stretch of land from 123-550 km to 150-400 km. The lands proposed to acquire are abutting to the road measuring 306.6 mtrs length and 2.15 mts width. Even though the petitioner was affected by the said acquisition, they accepted the acquisition proceedings in the larger public interest and made a claim for a sum of Rs.7,91,65,726/- as compensation. When the above award proceedings is pending, once again, the second respondent issued another notification under Section 3A(1) of the National Highways Act, stating that another extent of 491 sq.mts in the above said survey numbers sought to be acquired for widening of the road and invited objections. The petitioner submitted their objection on 13.04.2018 on the ground that the acquisition of the land would greatly affect the industrial security and it also affect the septic and sewage line system, security cabin, pathway access to approach the dining room. The above objection was forwarded by the second respondent to the third respondent inviting his remarks and after enquiry, the second respondent has passed the impugned order, thereby rejecting the

petitioner's request for excluding the land . Now, challenging the above said order, the present writ petition has been filed.

3. The learned counsel for the petitioner would contend that already the petitioner has accepted for the acquisition in respect of part of land. Now, all of a sudden, once again, another notification was issued requiring more lands and the notification has been issued with a malafide intention. Apart from that, the lands were acquired based on the original project, subsequently, without any modification of the original project, now, the present acquisition has been made in the piecemeal manner, which is not permissible under law. That apart, though lot of lands available on the left hand side of the road, the respondents with a malafide intention without acquiring the vacant land, now acquiring the petitioner's property, which is an existing industrial unit. The learned counsel further submitted that as per the earlier acquisition, there are sufficient space for providing service road and no further acquisition is necessary. The Highways authorities were acting according to their whims and fancies and acquiring the land for the project, which did not serve any public purpose. If at all any land is required for forming the service road, the authorities ought to have included in the original notification, only as an afterthought, the present notification has been issued and the petitioner's objection was also not properly considered by the second respondent.

4. The third respondent has filed a counter affidavit stating that the up-gradation of Dindigul-Bangalore Road in NH-209 to four lane with paved shoulders in the State of Tamilnadu was taken up by the National Highways Authorities of India and the above project was transferred to State Highways Authority for implementation after finalisation of tender. After finalisation of tender, the agreement entered into between the National Highways Authority of India and the contractor . As per the agreement, there is a provision for construction of four lane Railway Over Bridge, and the four laning of the project is to be carried out with the existing Right of Way and acquisition for additional land to be carried out for the insufficient Right of Way available all along the stretch, and also for service Road, Truck Lay Bye, Bus Bays and Toll Plaza, etc. Accordingly, the additional land required as per the design and drawing for the above captioned project with service roads in habitation areas are arrived in addition to the existing Right of Way. Based on the area arrived a notification under Section 3(A)(1) of the National Highways Act has been published in respect of the land involved for acquisition and notice was also issued to the land owners, the representative of the petitioner appeared before the second respondent and the second respondent, after hearing the petitioner's objection, rejected the objection

on the ground that the petitioner's lands were very much required for implementation of the project considering the alignment and width of the existing road. It is further stated that the existing right of way available near the proposed Railway Over Bridge Location is between 33.40 m to 38.00 m. As per the approved drawing of Railway Over Bridge by the Chief Bridge Engineer, Southern Railway Vide Lr.No. W.352/J/196 dated on 27.11.2017, the width of the Railway Over Bridge is 25 meters without service road, side drain and utility corridor. The existing road on this location is sharp curve and having skew to the existing Railway line. Considering all those facts, the Railway Over Bridge was designed with 36 degree skew to the LC line with only permissible radius as per the codal provision. It is further submitted that the available Right of Way (ROW) is 33.40m, the requirement of proposed Right of Way (PROW) as per design and drawing of Railway Over Bridge with the service roads, Utility Corridor, Drain etc. is 42.00m. Since insufficient land available in this location, additional land acquisition has been proposed to be made on both sides of the road to carry out the Railway Over Bridge work as per the design and drawings. It is also stated that as per the proposed service road is only 5.50m width (i.e) an intermediate line + 1m side drain + 1.5 m utility corridor which are essentially required. The 1.50m utility corridor is being utilised for E.B. Cable, Siruvaani Water Pipelines and Telephone Cable etc., by other department which are very essential. Hence, it is only a minimum width of 5.50m has been provided for service road and not 9.25m width as alleged by the petitioner.

5. The third respondent also filed additional counter stating that originally the Highways Department of Tamilnadu, NH wing issued LOA to work for the project and thereafter, the project was transferred to National Highways Authority for implementation. As assessed by the NH wing of Highways Department, an extent of 2.348 ha. of land has to be acquired and to be handed over to the contractor. But on transfer of the above project to NHAI, NHAI has assessed the land requirement as 4.965 ha. instead of 2.348 ha. and thereafter, initiated fresh acquisition proceedings for acquiring the remaining land. The land sought to be acquired is mainly required for the construction of Service Road, Bus Bays, Toll Plaza, Utility Corridor etc., and there is no ulterior motive, malafide intention or bias or favour in finalising the acquisition proceedings. The identification of lands and acquisition proceedings were made purely based on the requirements on the recommendation of the technical experts in the field of designing and constructing National Highways and the individual experts view given by the petitioner cannot be given importance.

6. Mr.Su.Srinivasan, learned Standing Counsel, appearing

for the petitioner third respondent would submit that originally the total land required was 4.96 acres, but the original acquisition proceedings was initiated only for 3.4 acres, and for want of extension of four lanes, fresh proceedings has been initiated for acquiring the additional land. The above acquisition has been initiated only based on the requirements and on the recommendation of the technical experts and there is no malafide intention in it. The land situated in the entire stretch of 23 km has been acquired .

7. I have considered the rival submissions and perused the materials available on record.

8. The petitioner is now challenging the order passed by the third respondent under Section 3C(2) of the National Highways Act. The main contention of the petitioner is that already an acquisition proceedings has been initiated by the authorities and certain extent of lands have been acquired from the petitioner for the very same project and for that the petitioner has raised no objection and also accepted the acquisition proceedings. But, now all of a sudden, once again, the respondent has initiated another acquisition proceedings for the very same purpose in a piecemeal manner, which is not permissible under law. Apart from that, by acquiring the additional extent of land , now the petitioner's factory is seriously affected. Earlier acquisition has been made as per the original project designed by the authorities, now after the work is being completed, now there is no necessity to acquire the additional land without any modification of the original plan and it has been done with the malafide intention.

9. The above contention has been disputed by the respondents stating that the entire work has been done as per the original project . As per the original project, total requirement of land is 4. 96 hec., but whereas, when the Highways Department of Government of Tamil Nadu has initiated land acquisition proceedings only an extent of 3.4 hec., thereafter, the work has been transferred to the contractor, when the work being commenced, on verification, it was found that the actual requirement of the land is not available. In the above circumstances, the present acquisition has been made.

10. The land acquisition was initiated based on the recommendation of the technical expert in the field of designing and construction of the National Highways. That apart, it is submitted that the petitioner land has been acquired for providing service road as well as drain and utility corridor. As per the IRC Standard the service road must be 7 meters. Now, the respondents acquiring only an extent of 5.50 mtrs, less than the IRC Standard and it no way affect the petitioner's

building, only the petitioner's compound wall going to be removed. In that circumstances, I find no malafide intention on the part of the respondents. That apart, the fresh acquisition proceedings has been initiated only on the ground that in the original acquisition total extent of land required is not acquired, and hence the fresh proceeding has been initiated.

11. So far as the contention of the petitioner that there was sufficient land, which is available on the other side of the road and without acquiring the such land, the petitioner's land was sought to be acquired, the second respondent in the impugned order clearly stated that the lands were acquired as per the original alignment prepared by the Experts and there is no deviation in it and hence, the contention of the petitioner cannot be countenanced. Considering the fact that since the second respondent has considered the petitioner's objection after conducting enquiry and giving adequate opportunity, and passed a detailed order rejecting the petitioner's objection, I find no illegality or irregularity in the order passed by the respondents. Hence, I find no merit in the writ petition.

12. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Deputy Registrar

//True copy//

Sub Assistant Registrar

mrp

To

- 1.The Secretary,  
The Ministry of Road Transport and Highways,  
The Government of India,  
Parivahan Bhavan,  
No.1, Sansad Marg, New Delhi-110 001.

- 2.The Competent Authority and  
Special District Revenue Officer(L.A),  
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3.The Project Director,  
The National Highways Authority of India,  
No.43, Kongu Nagar, Sowripalayam,  
Coimbatore-641 045.

+1cc to Mr.P.M.Duraisamy, Advocate SR.No.67244

+1cc to Mr.G.Karthikeyan, Advocate SR.No.67875

+1cc to Mr.SU.Srinivasan, Advocate SR.No.67475

+1cc to Government Pleader SR.No.67406

W.P.No.19298 of 2018

GMV (11/10/2018)



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