

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.43274 of 2016

and

W.M.P.Nos.37113 to 37115 of 2016

and

W.P.No.40893 and 40894 of 2016

and

W.M.P.Nos.34888 to 34891 of 2016

W.P.No.43274 of 2016 :

K.G.Yuvaraj

.... Petitioner

Vs

1. The State of Tamil Nadu
Represented by its Secretary to Government,
Highways and Minor Ports Department,
Secretariat, Chennai-600 009.

2. The District Collector,
Collectorate,
Coimbatore-641 018.

3. The District Revenue Officer
(Land Acquisition for Highways)
Collectorate,
Coimbatore-641 018.

4. The Divisional Engineer,
Highways Department,
Construction & Maintenance,
Tiruchy Road, Coimbatore-641 018.

.... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the entire records relating to the notification U/S.15(1) of Tamil Nadu Highways Act 2001 (Act 34/2002), made in G.O.(D) No.169, Highways and Minor Ports Department, dated 18.09.2012 published in Page Nos.582 to 588 of Tamil Nadu Government Gazette Notification No.43, Part II-

Section-2, issue dated 07.11.2012 and the consequential Award No.2 of 2016 dated 23.09.2016 passed by the 3rd respondent herein so far as the lands belonging to the petitioner (92 sq.mtrs) comprised in Survey No.61/4A(Part), Vadavalli Village, Coimbatore South within (Door No.12, Selvam Nagar, Vadavalli, Coimbatore) quash the same and forbearing the respondents from interfering with the peaceful possession and enjoyment of the petitioner's possession of his land and building in Door No.12, Selvam Nagar, Vadavalli, Coimbatore except by due process of law and except by a notification regarding any stretch of land from 4/9 - 5/0 kms. North Coimbatore-Marudhamalai Highway.

For Petitioner : Mr.D.Shivakumaran
For Respondents : Mr.Akhil Akbar Ali
Government Advocate

W.P.No.40893 of 2016 :

1.Mr.M.Balasubramaniam

2. Mr.M.Ramachandran

3. Mr.M.Rajendran ... Petitioners

Vs

1. Government of Tamil Nadu
Represented by its Secretary,
Department of Highways and Minor Ports,
Fort St.George,
Chennai-600 009.

2. District Revenue Officer
Collector Office Complex,
Coimbatore.

3. The Revenue Divisional Officer,
Collector Office Complex,
Coimbatore. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the 1st respondent relating to the impugned notification dated 02/08/2010 in G.O.Ms.No.122 Highways and Minor Ports HN 1 department issued by the 1st respondent herein and the publication of the notice under Sec.15 (2) of TN Highways Act 34 of 2002 in a newspaper called ''Dhinamani'' dated 22/01/2012 by the 2nd respondent and the Publication of G.O.(D) No.169, dated 18/09/2012 issued in the Public Gazette dated 7/11/2012 under Section 15(1) of TN High ways Act, 2001 by 1st respondent herein, quash the same and

consequently to forbear the respondents and its officials from acquiring the lands in S.F.No.63/2F part measuring 33sq.mt.in Vinayagar Street, Palani Goundanputhur, Vadavalli Village, Coimbatore Taluk, Coimbatore District.

For Petitioner : Mr.C.R.Prasannan

For Respondents : Mr.Akhil Akbar Ali
Government Advocate

W.P.No.40894 of 2016 :

Mrs.S.Vasantha Petitioner

Vs

1. Government of Tamil Nadu
Represented by its Secretary,
Department of Highways and Minor Ports,
Fort St.George,
Chennai-600 009.

2. District Revenue Officer
Collector Office Complex,
Coimbatore.

3. The Revenue Divisional Officer,
Collector Office Complex,
Coimbatore.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the 1st respondent relating to the impugned notification dated 02/08/2010 in G.O.(D).No.122 Highways and Minor Ports HN 1 department issued by the 1st respondent herein and the publication of the notice under Sec.15 (2) of TN Highways Act 34 of 2002 in a newspaper called ''Dhinamani'' dated 22/01/2012 by the 2nd respondent and the Publication of G.O.(D) No.169, dated 18/09/2012 issued in the Public Gazette dated 7/11/2012 under Section 15(1) of TN Highways Act, 2001 by 1st respondent herein, quash the same and consequently to forbear the respondents and its officials from acquiring the lands in S.F.No.63/2H part measuring 11 sq.mt.in Vinayagar Street, Palani Goundanputhur, Vadavalli Village, Coimbatore Taluk, Coimbatore District.

For Petitioner : Mr.C.R.Prasannan

For Respondents : Mr.Akhil Akbar Ali
Government Advocate

C O M M O N O R D E R

The petitioners herein own separate plots of lands in North Coimbatore to abutting Marudhamalai Road at about Vadavalli. The details where of are as under:

W.P.No.	Name of the Petitioners	Survey No of the Property
43274	K.G.Yuvaraj	61/4A(Part)
40893	M.Balasubramaniam M.Ramachandran M.Rajendran	63/2F(Part)
40894	S.Vasantha	63/2H(Part)

2. On 12.01.2012, the petitioners received a notice under Section 15(2) of the Tamil Nadu Highways Act, 2001, calling upon them to show cause why their property shall not be acquired. The grievance expressed by the petitioners are as follows:

(a) In the case of the petitioners in W.P.No.43274 of 2016, the petitioner's property is on the east of the road and according to him, this land is situated right on a curve, or rather creates a curve, and, that there are poromboke lands which are now under encroachment situate opposite to his property on the other side of the road. If this poromboke property which the Government already owns though under encroachment, is utilised for laying the road, there is no need to have a curve/bend/turning at the spot where the petitioner's property is situate and the road would become straight which is an essential condition for easy flow of vehicular traffic.

b) So far as the petitioner in W.P.Nos.40893 and 40894 of 2016 are concerned, the proposed design for widening the existing road takes a specific deviation to a west, and in the process, a curve is deliberately created. If this curve now sought to be created is avoided, then the road would be a straight road, but in order a straight road is maintained even after widening it, there is a need to acquire lands that lie opposite to petitioner's property on the other side of the road. But this property on the otherside of the road belonged to the father-in-law of Divisional Engineer, Highways. It is to avoid acquiring his father-in-law's property, the Divisional Engineer, Highways has misused his powers and has prepared a design. This is specifically stated in ground No.23 of the writ petition 40893 of 2016. In this regard, a written petition dated 24.09.2012 has given to the District Collector which contained the same allegation.

3. The counter in this case has not been filed. Mr.Akhil Akbar Ali, learned Government Advocate, takes notice for the respondents.

4. Heard Mr.D.Shivakumaran, learned counsel for the petitioner in W.P.No.43274 of 2016 and Mr.C.Prasannan, learned counsel for the petitioners assisted by Mrs.A.Kundavai, and Mr.Akhil Akbar Ali, learned Government Advocate for the respondents.

5. The learned Government Advocate made a preliminary statement that what the petitioners now seek are essentially pertaining to the design of the road, and inasmuch it belongs to the experts in the field to consider, this Court may not have jurisdiction in the matter.

6.1. Responding to the same, the counsel for the petitioners submitted that the petitioners are not seeking this Court to interfere in the matter of design of the road that has been done by the experts in the business, but accuse the Highway Department of arbitrary exercise of power in preparing a design that would cost the cash starved Government is unnecessarily acquiring private lands as in the case of W.P.No.43274 of 2016, or to suit the personal preference of the Engineer of the Highways Department, to avoid acquiring his father-in-law's property as in W.P.Nos.40893 and W.P.40894 of 2016. They also made a candid statement that they not against the current project undertaken to widen the concerned road.

6.2. The Counsel for the petitioner in W.P.No.43274 of 2016 further submitted that in the poramboke property suggested by him, there are encroachments, but encroachers are protected for political consideration.

7. Mr.Akhil Akbar Ali, learned Government Advocate vehemently refuted and contended that there is not a scintilla of truth in the allegation made, and the petitioners would be entitled to challenge the acquisition only if there are any procedural violation in this case.

8.1. On weighing rival contentions, it becomes apparent that while there is considerable merit in what the learned Government Advocate has submitted, the allegations expressed by the petitioners cannot also be brushed aside either.

8.2. If a poramboke land abutting the main road is available and if it can be used without payment of any compensation and there by a straight road could be formed, why was the design made? Is there then a merit in the allegations of the petitioners that

encroachers of the said pormoboke lands are protected? Is then the proposed design is done with motives which are alien to engineering science behind laying road? Similarly, so far as the petitioners in other two cases are concerned, they specifically allege colourable exercise of power, when they make a pointed allegation, that a straight road is made a curved road just to save the properties of the relative of the Engineer of the Highways Department.

9. While exercising ones authority under the statute, one shall raise above personal preferences, bias and prejudices, and act in the best spirit of the statute, holding commitment to the public cause alone as paramount. No colourable exercise of power, not even a shade, shall be let to define the administrative action of a statutory functionary. These petitioners were able to impress upon the Court when they brought to the notice of this Court certain facts that prima facie indicate that there may be motivated/colourable exercise of administrative power.

10. Therefore, this Court modifies the prayer sought for in this petitions and direct the petitioners to prefer separate representations to the 1st respondent with copies marked to the 3rd respondent/District Revenue Officer, District Collector and District Revenue Officer i/c., of the acquisition as well as Divisional Engineer, Construction and Maintenance, Highways Department, with all necessary materials at their disposal to substantiate their allegation taken herein within four weeks from the date of receipt of copy of this Order, whereupon the 1st respondent is directed to hold an enquiry into the same, complete the enquiry within three months after affording petitioners adequate opportunity of being heard in the matter, and should the first respondent find any materials to suspect that there is ulterior motives or colourable exercise of power in designing the road, appropriate follow up action too is directed to be taken.

11. With the above direction, these petitions are disposed of. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)
//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Highways and Minor Ports Department,
Secretariat, Chennai-600 009.

2. The District Collector,
Collectorate,
Coimbatore-641 018.

3. The District Revenue Officer
(Land Acquisition for Highways)
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4. The Divisional Engineer,
Highways Department,
Construction & Maintenance,
Tiruchy Road, Coimbatore-641 018.

5. The Revenue Divisional Officer,
Collector Office Complex, Coimbatore.

6. The District Revenue Officer
Collector Office Complex Coimbatore

+1 cc to M/s.D.Shivakumaran Advocate sr 10842

+2 ccs to M/s.C.R.Prasanan Advocate sr 1110 & 1111

+1 cc to the Government Pleader High Court Madras
sr 12537

W.P.No.43274 of 2016
and

W.M.P.Nos.37113 to 37115 of 2016
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