

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2018

CORAM :

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.A.No.2823 of 2018
and C.M.P.No.23478 of 2018

T.K.Rajendran ... Appellant/Petitioner

vs.

1.The Secretary to Government,
Highways Department,
Fort St. George, Chennai.

2.The District Collector,
Kancheepuram.

3.The Special Thasildar (LA),
Inner Ring Road Scheme,
Alandur Municipality Campus,
Alandur, Chennai - 16.

4.The Commissioner,
Pallavaram Municipality,
Pallavaram, Chennai,
Kancheepuram District. सत्यमेव जयते Respondents/Respondents

Writ Appeal filed under Section 115 of the Letters Patent
against the order passed by this Court dated 16.11.2018 made in
W.P.No.4522 of 2012.

W.P.No.4522 of 2012:

filed under Article 226 of the Constitution of India, praying to
issue a Writ of certiorari, calling for the records of the
impugned notice issued by the 3rd Respondent No.RC. 148/09 dated
22.12.2011 and quash the same.(Prayer amended as per order dated
12.10.2018 in W.M.P. 30814/2018 in W.P.No.4522 of 2012)

For Appellant : M/s.D.Malarvizhi

For Respondents: Mr.C.Thirumaran
Special Government Pleader

JUDGMENT

(Judgment of this Court made by T.S.Sivagnanam,J.)

This appeal has been filed by one of the writ petitioner in a batch of cases, Mr.T.K.Rajendran, who was the petitioner in W.P.No.4522 of 2012. By common order dated 16.11.2018, the writ petitions were dismissed. Challenging the same, this appeal has been preferred.

2.The appellant filed a writ petition praying for issuance of writ of Certiorarified Mandamus, to quash the notification issued by the first respondent, Highways Department under Section 15(1) of the Tamil Nadu Highways Act, Act 34 of 2002 (hereinafter referred to as "the Act") published in the Tamil Nadu Government Gazette dated 16.03.2011 in respect of the appellant's building and to quash the same and direct the respondents to restrict the acquisition to 5 feet on either side out of the existing 20 feet in Radha Nagar Main Road, Chromepet, Chennai-600044. The appellant and the other writ petitioners are the residents of Radha Nagar Main Road, living there for several years and the Radha Nagar Main Road is a East-West Road which joins a North-South running service road on its western extremity perpendicularly and parallel to the service road, there is a railway track. To the further east of the railway track is the GST road and for crossing the railway track, there is a manual level crossing which connects the Radha Nagar Main Road and the GST road. The Pallavaram Municipality had earlier passed a resolution for forming a subway beneath the railway track having a width of 27 feet, out of which, for a width of 7-1/2 feet, a service road was proposed to be formed. Based on such resolution, the Government of Tamil Nadu published a notification under Section 15(2) of the Act dated 04.03.2010 proposing to acquire the lands of the appellant/writ petitioner and other land owners. The extent proposed to be acquired for a stretch of land to a width of 30 feet. Notice was issued and objections were called for and the appellants and other land owners appeared for enquiry conducted under Section 15(2) of the Act and filed their objections. It is the contention of the appellant and the other writ petitioners that without following the procedure under Section 15(3) of the Act, the authorities proceeded with the acquisition proceedings and this prompted the appellant and the writ petitioners to approach the Court in the year 2012.

3.The main grounds of challenge before the writ Court was that personal notice is required to be served in terms of Section 15(2) of the Act and no such notice was given. Further it is submitted that no enquiry was conducted as contemplated under Section 15(3) of the Act r/w. Rule 5 of the Tamil Nadu Highways Rules, 2003. Further, it was contended that only after enquiry as contemplated under Section 15(3) of the Act, the Government can proceed to declare its intention to acquire the lands under Section 15(1) of the Act. Further, it is submitted that the notification indicated that the acquisition was for forming a pedestrain subway but the purpose for which the lands are to be acquired at present is for a vehicular subway.

4.The above contentions were countered by the respondents by filing a counter affidavit stating that the Government have accorded administrative sanction for construction of pedestrain subway bridge near Chrompet Station and the Highways Department prepared a land plan schedule for acquiring 1929 sq.mtrs for the said project. The District Collector was empowered to issue notice under Section 15(2) of the Act which was issued on 29.09.2003 and published in the newspaper on 04.03.2010 and enquiry was scheduled to take place on 29.03.2010 for receiving objections from the land owners. The appellant as well as the other writ petitioners filed their objection, some of them individually, and most of them through their Resident's Association and requested the acquisition be avoided. The objections filed by the appellant and the writ petitioners were partly accepted by the Government and to that extent, it issued a notification dated 19.12.2011 and based on the objections, the width of the proposed service road was reduced to 4.0 mtrs from the originally proposed 5.5 mtrs on either side and consequently, the total extent proposed to be acquired was reduced from 1929 sq.mtrs to 1528.5 sq.mtrs. Following which, notification under Section 15(1) of the Act was published on 16.03.2011 and compensation has been determined and since the appellant and the other writ petitioners did not claim compensation, the same has been deposited in terms of Section 23 of the Act. Further, on 21.12.2011, the land acquisition authority had issued separate notices under Section 16(2) of the Act to the appellant and the other writ petitioners/land owners to surrender possession. The allegation that the individual notices were not served was denied by the respondents and stated that the notices in printed format was issued separately clearly indicating that the land is sought to be acquired for formation of a subway. It was admitted that a small typographical mistake had occurred while issuing notice under Section 19 of the Act which was for the purpose of determining the award of compensation payable, it was wrongly mentioned as "Over Bridge".

5.The writ Court had directed the learned Special Government Pleader to produce the original files and it appears that the

officials of the Highways Department were present in Court and the Court interacted with the officials to get the first hand information about the procedures followed by the Department. The main contention of the appellant and the other writ petitioners was that no enquiry was conducted as contemplated under Section 15(3) of the Act. The Writ Court had called for the files and satisfied itself that the contention raised by the appellant and the other writ petitioners/land owners was found to be false. In paragraph 10 of the impugned order, the Writ Court has recorded that the official files disclose that personal/individual notices have been issued and the they also raised their objections either individually or through their association and therefore, found the case of the appellant and the other writ petitioners be false and incorrect. Further, the Court also considered the scope of enquiry required to be done. Thus, the Writ Court was satisfied that there was sufficient statutory compliance.

6. Before us, the learned counsel for the appellant reiterated the very same stand taken before the Writ Court and particularly placing much emphasis on the communication sent by the Chief Bridge Engineer, Southern Railway to the Chief Engineer (Metro), Highways Department dated 23.04.2017. It is the submission of the learned counsel for the appellant that the Railways have clearly stated that there is no land available with them and this aspect has to be considered by the Highways Department. Further, the Officer of the Highways Department who is present in Court has informed that initially the Highways Department requested for a portion of the railways land but since they have stated that it is not feasible, now the project is to be implemented in the Highways land itself.

7. Therefore, in our considered view, the communication of the Chief Engineer (Metro) dated 23.04.2017 will not in any manner assist the case of the appellant. Furthermore, it is clear that from the said communication dated 23.04.2017, subway has already been completed by the Railways below the railway track in their location in L.C.No.27 and this has not been put to use on account of the appellant and the writ petitioners having filed writ petitions in the year 2012. Thus, this Court is fully satisfied that the writ Court rightly rejected the writ petitions and found that none of the contentions raised by the appellant merits consideration. The learned counsel for the appellant vehemently contended that if they convert the subway into a pedestrain underpass, then they have no objection and their lands would not be acquired. It is not for this Court to direct the authorities to do a particular thing in a particular manner and it is for the authorities to take a decision as to what would be the requirement in the particular location as it is common knowledge that there are frequent accidents occurring when public attempt to cross the level crossing. Therefore, it

appears that it is the policy of the Southern Railway to rule out the manual level crossing and replace the same with subways. The Court can only test the correctness of the procedure followed by the authorities while acquiring the lands of private parties for a public purpose. The Court can go into the decision making process but cannot examine the merits of the decision as to whether there should be a vehicular underpass or a pedestrian underpass, etc. It is best that these are all left to the decision of the authorities. Thus, we find that there are no grounds to interfere with the order passed by the writ Court.

8. Accordingly, the writ appeal fails and hence, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

9. After we have dictated the judgment in the above appeal dismissing the same, the learned counsel for the appellant on instructions submitted that the appellant will file an affidavit undertaking to vacate the premises to facilitate the land acquisition proceedings to be concluded and requested three months' time to do so. In tune with the said submission, the appellant Thiru.T.K.Rajendran, has filed an affidavit stating that he will make alternate arrangements and reasonable time may be granted to him and accordingly, has prayed for three months' time for vacating the premises at his cost.

10. The officials of the respondent who are present in Court have raised an objection with regard to three month's time sought for and submitted that already one month have lapsed after the writ petition was dismissed. Further, it is submitted that the project is of utmost importance and this is the only place where subway is yet to be constructed and it will resolve lot of problems for several persons.

11. Considering the above submissions, this Court directs the appellant to vacate and hand over possession of the premises which is required for the project on or before 28.02.2019.

12. The learned counsel for the appellant submits that similar affidavit of undertaking will be given by other writ petitioners also before the officials of the Highways Department. The learned counsel would further submit that there is a primary school in the area which has around 250 students and hence, the school should be granted time till 31.03.2019.

13. As rightly pointed out by the learned Special Government Pleader, the School is not the appellant before this Court. In any event, since the learned counsel for the appellant submits that all the writ petitioners shall submit affidavit of undertaking to vacate the premises to the officials of Highways

Department and if affidavit of undertaking is given, time granted by this Court in the case of Thiru.T.K.Rajendran be granted to other land owners and in the case of school, the officials of the Highways Department may take a reasonable stand. If affidavit of undertaking is not filed within two days from today, it is open to the respondents to proceed in accordance with law.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

cse
To

- 1.The Secretary to Government,
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Kancheepuram District.

+1 CC to Mrs. D. Malarvizhi, Advocate sr 89299.
+1 CC to Govt. Pleader sr 89161.

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