



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.03.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A.(MD)No.432 of 2018
and
C.M.P.(MD)No.2595 of 2018

Tharahai Cuthbert

: Appellant

Vs.

1. The District Collector,
Kanyakumari District at Nagercoil.
2. The District Revenue Officer,
(Land Acquisition National Highways)
And Competent Authority, Tirunelveli.
3. The Tahsildar,
Kalkulam Taluk, Kanyakumari District.
4. The Superintendent of Police,
Kanyakumari District, Kanyakumari.
5. The Project Director cum DGM (Tech),
No.314E, K.P.Road, Near Ayappan Kovil,
Parvathipuram, Nagercoil - 629 003.
Kanyakumari District.
6. The Union of India,
Represented by its Secretary,
Ministry of Road Transport and Highways,
Transport Bhawan,
No.1, Parliament Street, New Delhi.

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, to set aside the order dated 02.03.2018 in W.P(MD).No.1308 of 2018.

Prayer in WP(MD)No. 1308/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of mandamus, forbearing the respondents from forcibly taking possession of the land in Survey No.22/10A situated in Aloor B, Village, Kalkulam Taluk, Kanyakumari District except under the procedure established in Section 3E of the National Highways Act, 1956



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For Appellant : Mr.G.Prabhu Rajadurai
For Respondents 1 to 5 : Mr.A.Muthukaruppan
Additional Government Pleader
For Respondent No.6 : Mr.Su.Srinivasan
Standing Counsel

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.]

The matter in issue pertains to acquisition of 535 sq.mts of land in Survey No.22/10A of Aloor B Village, Kalkulam Taluk, Kanyakumari District, for the purpose of four-laning the road by the National Highways Authority of India.

2.The petitioner filed W.P.(MD)No.1308 of 2018, praying for issuance of writ of mandamus forbearing the respondents from forcibly taking possession of the said land, except under the procedure established in Section 3E of the National Highways Act, 1956 and the learned Judge has disposed of the said writ petition by taking note of the fact that already this Court has granted interim order dated 24.01.2018, and by virtue of the same, the petitioner is in possession till date and also noted the fact that the road laying work has already been commenced and hence, directed the respondents to issue notice granting thirty days time for handing over the possession, and further the petitioner was directed to hand over the possession within thirty days from the date of receipt of the said notice. The writ petitioner, challenging the legality of the said order, came forward to file this writ appeal.

3.Mr.Prabhu Rajadurai, learned Counsel appearing for the appellant made a submission that as per Section 3E of the National Highways Act, possession cannot be taken, unless 60 days notice is given to the land owners and further the respondents have no jurisdiction to fix the compensation unless there is a notification under Section 105(3) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and in accordance with the provisions of Act 30 of 2013.

4.Per contra, Mr.Su.Srinivasan, learned Standing Counsel appearing for the National Highways would submit that such a point was never raised either in the writ petition or during the course of the arguments in the writ petition and the procedural formalities contemplated under the National Highways Act have been fully complied with and due to such tactics adopted by the appellant / writ petitioner, the four-laning of the road is getting stalled and prays for dismissal of this writ appeal.

5.In response to the said submission, the learned Counsel appearing for the appellant made a submission that in yet another case, the very same point came up for consideration and orders have



been reserved by the Hon'ble Justice T.S.SIVAGNANAM and the Hon'ble Justice R.THARANI and orders are awaited.

6.This Court, upon hearing the rival submissions, is of the considered view that the points urged in the writ appeal have not been argued or advanced in the writ petition and though the learned Counsel appearing for the appellant prayed for deferment of the hearing of the writ appeal till the orders are pronounced in the said writ appeal, this Court is not inclined to grant time, since the writ petitioner, by virtue of the interim order granted in the writ petition, did not part with the possession and the learned Judge, while disposing of the writ petition has directed the National Highways to issue thirty days notice for handing over the possession and in that process also gained another thirty days time.

7.At this juncture, the learned Counsel appearing for the appellant, on instructions from the appellant, who is also present before this Court today, prays for time till 30.04.2018 to vacate, deliver vacant and peaceful possession of the acquired lands to the second respondent and on the said submission, the Court heard the submission of Mr.Su.Srinivasan, learned Standing Counsel, who says that thirty days time may be granted from today to vacate and deliver the land in question.

8.This Court, taking into consideration the above facts and circumstances and in the light of the submission made by the learned Counsel appearing for the appellant, on instructions from the appellant, is inclined to grant time till 30.04.2018, to vacate and deliver the vacant and peaceful possession of the acquired lands to the second respondent.

9.The writ appeal stands disposed of, accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Kanyakumari District at Nagercoil.
2. The District Revenue Officer,
(Land Acquisition National Highways)
And Competent Authority, Tirunelveli.



3. The Tahsildar,
Kalkulam Taluk, Kanyakumari District.

4. The Superintendent of Police,
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6. The Secretary,
Union of India,
Ministry of Road Transport and Highways,
Transport Bhawan, No.1,
Parliament Street, New Delhi.

+ 1 CC TO Mr.G.PRABHU RAJADURAI, ADVOCATE IN SR No. 58333

+ 1 CC TO Mr.SU.SRINIVASAN, ADVOCATE IN SR No. 58053

MR

TE/SV-MMS/SAR-4 : 02/04/2018 : 4P/9C

JUDGMENT MADE IN
W.A(MD)No.432 of 2018 and
C.M.P.(MD)No.2595 of 2018
26.03.2018