



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2018

CORAM:

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THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P. (MD) No.1308 of 2018

and

W.M.P. (MD) Nos.1371 and 4626 of 2018

Tharahai Cuthbert

... Petitioner

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 Petition is filed under Article 226 of the Constitution of India praying for the issuance of 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.

For Petitioner

For R1 to R4

For R5

For R6

: Mr.G.Prabhu Rajadurai

: Mrs.J.Padmavathi Devi,
Special Government Pleader.

: Mr.S.V.Srinivasan

: Mr.P.Dharmaraj

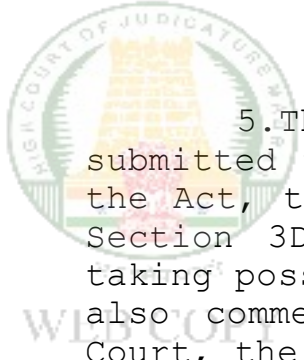
**ORDER**

This writ petition has been filed seeking a direction 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 under Section 3E of the National Highways Act, 1956.

2. According to the petitioner, he is the owner of the above said property. Earlier, a notification said to have published by the 6th respondent under Section 3A(1) of the National Highways Act, 1956 (hereinafter called as the Act) and a notice was also issued to the petitioner's father by the second respondent on 24.08.2010 and the petitioner also raised his objections. But, the second respondent by an order dated 30.09.2010 rejected the objections filed by the petitioner and later on the 6th respondent published a notification dated 25.02.2011 under Section 3D of the Act. Thereafter, without issuing any notice to the petitioner, an award said to have been passed by the second respondent, and copy of the award was not served on him, the same was also not published under Section 3G(3) of the Act. According to the petitioner, he is running a gas filling station in the above premises. Now, the respondents without issuing any notice, under Section 3E(1) of the Act, are taking steps to demolish the gas filling station and forcibly taking possession of the land. Hence, the present writ petition has been filed.

3. Earlier, when the matter came up for admission, this Court, considering the submission made by the learned counsel appearing for the petitioner that as he is running gas filling station, he requires some time to vacate the premises, granted an order of status quo on 24.01.2018. Now, the 5th respondent filed a petition to vacate the interim stay, and by consent the writ petition itself taken up for final hearing.

4. The learned counsel appearing for the respondents submitted that notification issued under Section 3A(1) of the act has been issued as early as on 23.03.2010, and the publication was also made in the local dailies on 27.04.2010. Subsequently, a notice was issued to the petitioner's father on 24.08.2010, and the petitioner also raised his objections, and the authorities rejected his objections by an order dated 30.09.2010. Thereafter, a declaration under Section 3D of the Act was passed on 25.02.2011. After issuing declaration, an enquiry was conducted under Section 3G of the Act. Before determining the amount that the publication also made on 20.07.2011, under Section 3G(3) of the Act. Then after enquiry, the award was also passed on 23.03.2011, which was approved by the competent authority, and the award amount was also deposited.



5. The learned counsel appearing for the respondents further submitted that once the declaration issued under Section 3D(1) of the Act, the land automatically vested with the Government as per Section 3D(2) of the act. Now, after passing the award and taking possession of the land, tender was called for, and the work also commenced. Because of the interim order passed by this Court, the work has been stopped.

6. I have heard the learned counsel appearing for the petitioner, and the learned Special Government Pleader appearing for the respondents 1 to 4, the learned counsel appearing for the 5th respondent and the learned counsel appearing for the 6th respondent and also perused the materials available on record carefully.

7. The grievance of the petitioner in the writ petition is that without issuing any proper notice and conducting proper enquiry, the award has been passed by the second respondent and the above award amount was also not deposited in the Court. Apart from that no notice was given to the petitioner under Section 3E of the Act, asking him to hand over the possession, without issuing any notice, the respondents cannot take possession of the petitioner's land.

8. On a perusal of the counter affidavit filed by the second respondent, it is seen that the award amount has already been deposited and if the petitioner has any grievance against the land acquisition proceedings, the petitioner ought to have challenged the same in the manner known to law. So far as the contention of the petitioner regarding taking possession that no notice was issued to him under Section 3E of the Act, the learned counsel appearing for the 6th respondent submitted that issuance of notice is not mandatory, and the petitioner is well aware about the acquisition proceedings and passing of award and in such circumstances, notice need not be issued to the petitioner asking for handing over the possession.

9. The contention of the learned counsel appearing for the 6th respondent cannot be accepted for a single reason that the petitioner is being owner of the property, before taking possession, the authorities necessarily issue a notice under Section 3E of the Act. Considering the fact that already this Court granted interim order on 24.01.2018, by virtue of the same, the petitioner is in possession till date, that apart as the road laying work has already been commenced, the respondents are directed to issue a notice granting 30 days time for handing over the possession, and the petitioner is directed to hand over the possession within a period of 30 days from the date of receipt of



10. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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/True copy/

Sd/-

Assistant Registrar(RTI)

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,
Kanyakumari District, Kanyakumari.
- +1. CC to M/S.G.Prabhu Rajadurai, Advocate SR.No.52721
+1. CC to M/S.SV.SRINIVASAN Advocate SR.No.52599
+1. CC to M/S.P.Dharmaraj, Advocate SR.No.52600
+1. CC to Special Government Pleader, SR.No.53336

W.P(MD)No.1308 of 2018
02.03.2018

Myr

MKV-PM-PN-SAR 3/6.3.2018/4P-9C