

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated : 18.04.2018****Coram**

**The Hon'ble Mr.Justice T.S.Sivagnanam
&
The Hon'ble Mrs.Justice R.Tharani**

Orders reserved on 15.03.2018	Orders pronounced on 18.04.2018
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**W.P (MD) No.2353 of 2018
and
W.M.P(MD) Nos.2565 and 4504 of 2018**

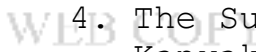
1.B.Nambirajan
2.P.Gurusamy
3.P.Mohanaraj
4.V.Dhasappan
5.M.Joseph Legoi
6.J.Maria Ghanam
7.K.Jaisey
8.M.Maria Thangam
9.P.Rajamani
10.J.Siluvai Rajan
11.V.Maria Nesam
12.M.Maria Thangam
13.C.Sarojini
14.C.E.George
15.R.Irin
16.S.Kurusu Micheal
17.A.Augustine Selvaraj
18.S.Francis
19.J.Maria Samidas
20.S.Sahayaraj
21.J.Maria Selvi
22.A.Sadasivan
23.S.Loius
24.C.Lilly Gladis

...Petitioners

Vs.

1. The District Collector,
Kanyakumari District at Nagercoil

2. The District Revenue Officer,
(Land Acquisition National Highways)
and Competent Authority, Tirunelveli



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,
Rep., by its Secretary,
Ministry of Road Transport and Highways
Transport Bhawan,
No.1, Parliament Street, New Delhi.

7. The Tahsildar,
Villavan Kodu Taluk, Kanyakumari District.

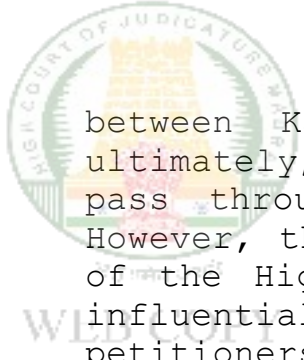
Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to forbear the respondents from forcibly taking possession or demolishing the houses of the petitioners situated along the new aligned NH47 without following the procedure established under Section 3E of the National Highways Act 1956 and pass such further or other orders.

For Respondents : Mr. S.Dhayalan G.A.,
for R1 to R4 & R7

O R D E R

The petitioners, 24 in number, have filed this Writ Petition to forbear the respondents from forcibly taking possession or demolishing the houses of the petitioners situated along the new aligned NH-47 without following the procedure under Section 3E of the National Highways Act 1956 (hereinafter referred to as "The Act").

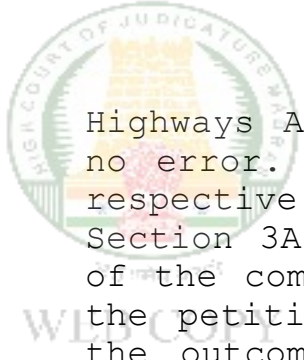
<https://hcservices.ecourts.tn.gov/hcservices/>



between Kanyakumari to Trivandrum as a four way road and ultimately, when the proposal was drawn, the four way road had to pass through Kaliyakkavizhai, Marthandam and Thukkalay town. However, the National Highway Authority have changed the alignment of the Highway on account of the encroachments made by several influential persons along side the road in those three towns. The petitioners' further case is that the National Highways Authority ought to have removed the encroachments and widened the existing NH-47 and should not have realigned the road. The first Writ Petitioner would state that he owns lands measuring an extent of 24 cents and has constructed a house and after receiving notice under Section 3A of the Act, he submitted his objections before the second respondent and other similarly placed landowners also filed their objections, which were not considered and an order was passed by the second respondent dated 06.08.2010, rejecting the representation on the ground that the lands are required for the National Highways. Thereafter, without even issuing any notice to any of the landowners and without conducting enquiry, an award was passed. Thus, it is submitted that the petitioners and other similarly placed persons are not aware as to what is the extent of property of their property which is to be acquired for the formation of NH-47. The details of the landholdings of the other 23 petitioners have also been set out in paragraph 8 of the affidavit filed in support of the Writ Petition. Further, it is submitted that the compensation payable to the petitioners has to be determined in accordance with Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Settlement Act, 2013 in the light of the Section 105(3) of the said Act. Further, it is submitted that without depositing the compensation in terms of Section 3E read with Section 3H of the Act, the possession of the acquired land cannot be taken over.

3. Mr.G.Prabhu Rajadurai, learned counsel for the petitioners, while reiterating the submissions made in the Writ Petition, contended that the land acquisition proceedings itself is vitiated as the provisions of the Act are inapplicable, since the road, which is proposed to be formed is a new road and not a declared National Highway and the National Highways Act will be applicable only if a declaration is made in accordance with Section 2 of the Act. Therefore, it is submitted that the entire proceedings stand vitiated. Further, it is submitted that compensation has not been deposited and therefore, the possession of the lands owned by the petitioners cannot be disturbed.

4. Mr.Su.Srinivasan, learned Standing counsel appearing for the National Highways Authority submitted that the Writ Petition is not maintainable and none of the petitioners have challenged the proceedings and therefore, they are not entitled for any relief in this Writ Petition. Further, it is submitted that the procedure required to be followed under the National



Highways Act, have been scrupulously followed and there has been no error. The learned counsel furnished the dates on which the respective notification/enquiry was issued/conducted namely under Section 3A(1), 3C(2), 3D(1), 3G(3), and award and date of deposit of the compensation amount. Further, the details as to which of the petitioners, who had attended the 3G(3) enquiry and what is the outcome of such enquiry were also furnished in a tabulated form. Further, it is submitted that the award in respect of all the four villages were passed between 11.08.2014 and 07.10.2014 and the compensation amount has been deposited in a joint account for all the four villages and some of the landowners who appeared and produced their documents of title and extent of holding, were paid the compensation and they have received the same. Further, the Sub-Collector of Padmanabapuram had conducted a meeting on 17.11.2017 on directions issued by the District Collector for disbursement of the amount of compensation. Further, all statutory approvals have been obtained including the environmental clearance. Further, it is submitted that the prayer in the Writ Petition itself is not to dispossess the petitioners without following due procedure of issuance of notice and when such a prayer has been made, the petitioners cannot indirectly challenge the acquisition proceedings, which has already been completed.

5. Heard the learned counsels for the parties and perused the materials placed on record.

6. The petitioners have sought for issuance of a Writ of Mandamus to forbear the respondents from dispossessing them from the lands in question without following the procedure under the provisions of National Highways Act. Thus, there is no challenge to the acquisition proceedings initiated by the National Highways Authority and the petitioners seek to protect their possession and claim that they shall not be evicted without notice. In the background of these facts, any indirect challenge to the acquisition proceedings cannot be entertained and such contentions are to be outrightly rejected.

7. The learned counsel for the petitioner submitted that the present alignment which has been fixed by the authorities, is totally a new alignment, a new road, not declared as a National Highway and that unless a declaration is made to the said effect in terms of Section 2(1) of the Act, the question of terming it as a National Highway does not arise.

8. In our considered view, this submission is totally devoid of merits, as the acquisition proceedings is for four laning of NH-47, which includes widening of the existing road. Therefore, to state that it is totally a new road, not declared as a National Highway is an incorrect submission. Nextly, unless the road is formed before dedicating to public use, it is to be declared as a National Highway and not prior to that. In the instant case, the



notification under Section 3A(1) was approved by the Central Government and has been published in the village gazettes as well as in the local daily between March 2010 and June 2010, as mandated under Section 3A(3), objections have been called for within 21 days from the date of publication and the petitions which were received have been shown to have been enquired in terms of Section 3C(1) of the Act and orders have been passed under Section 3C(2) of the Act. It is thereafter notification under Section 3D(1) of the Act was approved by the Central Government and it has been published in the village gazettes as well as in the local daily between February and September 2011.

9. The substance of the notification has been published in the local newspaper as required under Section 3G(3) of the Act inviting claims from persons interested and for obtaining the correct value of the superstructure, standing crops, trees etc. After following such procedure, awards have been passed in Award No.6 of 2014, dated 16.09.2014, Award No.6 of 2015, dated 29.02.2015 and Award No.7 of 2015, dated 07.10.2015. Thus, in terms of the scheme of the Act, after a notification is issued under Section 3D(1)&(2) of the Act, the lands shall absolutely vest with the Central Government free from all encumbrances and such notification was published on 11.02.2011, 16.05.2011 and 08.04.2011 in respect of Thiruvithamcode village, Eraniel village and Kalkulam village respectively. The respondent NHAI has denied the allegations that there is encroachment in the three villages alongside NH-47 and it is stated that there is no encroachment into the road, but the area is congested and will not be sufficient for free flow of traffic from Kanyakumari to Trivandrum and therefore, a new alignment was proposed. Thus, it can be seen that the project is four laning of existing NH-47, and as per technical exigencies, alignments have been altered, so that the road serves its purpose. It is further submitted that so far as the compensation payable in respect of the landowners in Kalkulam village, since the award was passed prior to 31.12.2014, it was not paid in terms of the Act 30 of 2013, but in respect of the other two villages namely, Thiruvithamcode and Eraniel, compensation has been paid in terms of Act 30 of 2013. The respondents have clearly stated that there is no forcible action taken by them against the landowners and the work done by the National Highways has been proceeded strictly in accordance with the provisions of the Act. Further, it is submitted that on account of the pendency of the Writ Petition, the entire project is being stalled and it being a time bound project, unless the entire stretch is available, it would be difficult for the respondents to move the machinery from one place to another and therefore, the interim order has to be vacated.

<https://hcservices.courts.gov.in/hcservices/> mentioned earlier, the petitioners have not questioned the acquisition proceedings and from the data furnished by NHAI, it is seen that the notifications have been published in



accordance with the provisions of the Act and there is no violation of time lines prescribed under the Act and the award amount has also been deposited in a joint account of the Project Director of NHAI and the competent authority. Further, from the information furnished by the NHAI, it is seen that some of the landowners have received the compensation after proving their title and extent over their respective properties. In this manner, a sum of Rs.2,21,44,362/- has been disbursed as compensation and the amount lying in joint deposit is Rs. 6,72,28,777/-. Thus, if the petitioners/land owners are interested in receiving the compensation, they are required to approach the authorities by producing their documents of title, prove their entitlement and receive the same. Thus, this Court cannot entertain an indirect challenge to the acquisition proceedings in the manner done by the petitioners.

11. The learned counsel for the petitioner stressed that the change of alignment was to benefit certain influential persons. However, such an allegation remains unsubstantiated and it is a bald averment and no material has been placed by the petitioners before this Court to prove the said submission. The other allegation made by the petitioners is that the influential persons are encroachers. This has been specifically denied by the second respondent in their counter affidavit stating that there is no encroachment. The petitioners have not denied the said stand taken in the counter affidavit, as no reply affidavit has been filed. Thus, the faint plea of *malafide* exercise of power is liable to be outrightly rejected.

12. As mentioned earlier, the contention of the petitioners that since there is no declaration under Section 2(1) of the Act, for declaring the newly aligned road, as a National Highway, the provisions of the Act would not apply, is an incorrect submission. Such an argument was considered in a case arising under the Tamil Nadu Highways Act, a State enactment [refer decision in *W.P.No.1109 of 2014, dated 21.02.2014 (Jayaraman & Ors., vs. State of Tamilnadu & Ors.,)*]. The submission made by the said Writ Petitioners was also identical to that of the submissions made before us. While rejecting the said submission, it was held that the Act cannot be read and interpreted to mean that it does not empower the Government or the competent authority to acquire lands, for construction of a highways or for widening of any road, unless and until, a road has been declared as Highways, under Section 3 of the Act. The Act manifestly states that for the purpose of construction, maintenance or development of any highway lands can be acquired. The Act provides for construction of a highway. It provides for maintenance. An existing road can also be declared as State Highways, and developed. For the purpose of <https://hccourtscourtservices.org/> a highway, maintenance, development, and in sum and substance, for the purpose of giving effect to the Act, all acts can be done by the competent authorities, which includes



acquisition of lands also.

13. Thus, for the above reasons, we find that the acquisition proceedings initiated for widening of NH-47 cannot be faulted and the contentions advanced by the petitioners to continue to remain in the property in question, which is vested with the Central Government free from all encumbrances, is devoid of merits. As pointed out by the Hon'ble Supreme Court in the case of **Girials Investment (P) Ltd vs. State of Karnataka [2008 (7) SCC 53]**, the acquisition is for the benefit of the public at large and therefore, the Court should not interdict such proceedings and in doing so, extraordinary reasons must exist. We find that there are no extraordinary reasons to entertain the petitioners' prayer. Furthermore, the compensation amount has been determined and lying in deposit, which the landowners can receive on establishing their entitlement. In respect of two of the villages, the compensation is stated to have been given in accordance with Act 30 of 2013. The adequacy and inadequacy of the compensation is to be adjudicated before a different forum. The typed set of documents filed by the respondent NHAI, shows that adequate publication has been given in the locality including Press statement and local publication by way of announcement in the villages etc., and the Collector has also conducted special camp to sensitize the public of the area. Thus, all persons, whose lands have been acquired are fully conversant with the factual position and therefore, the present attempt of the 24 petitioners is to somehow stall the road widening project which has commenced and is in the advanced stage of implementation. It is not for the petitioner to dictate as to which part of the road is first required, what is the type of work which has to be done at the first instance. These are all issues to be decided by the authorities and not for the Court in a Writ Petition under Article 226 of the Constitution, especially when there is no malafide exercise of power.

14. For the above reasons, there is no merit in the Writ Petition and the same is dismissed and the interim order granted in the Writ Petition is vacated. Consequently, connected Miscellaneous petitions are dismissed. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,

<https://hcservices.ecourts.gov.in/hcservices/>
Ranyakumari 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 Secretary,
Union of India,
Ministry of Road Transport and Highways
Transport Bhawan,
No.1, Parliament Street, New Delhi.

7. The Tahsildar,
Villavan Kodu Taluk, Kanyakumari District.

+ 1 cc TO Mr.Su.Srinivasan , Advocate in SR No. 62034
+ 1 cc TO The Special Government Pleader in SR No. 62191

pbn
AE/RSK/SAR1/16.05.2018/8P/10C

W.P (MD) No.2353 of 2018
18.04.2018