



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE C.T.SELVAM

And

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

W.P(MD)No.11744 of 2018

and

W.M.P. (MD) Nos.10667, 10668 and 11994 of 2018

Ottanchathiram Taluk Water Bodies Protection
Agriculturist Welfare Association,
Sathirapatti,
Rep. by its President,
Alagiyanna,
S/o. Alagiyana Gounder,
Gopalapuram,
Sathirapatti Post,
Ottanchathiram Taluk,
Dindigul District.

... Petitioner

vs.

- 1.The Union of India,
Represented by its Secretary,
Road Transport & Highways Department
of Road Transport and Highways,
New Delhi.
- 2.The Government of Tamil Nadu,
By its Secretary,
Highways Department,
Chennai.
- 3.The Chairman & Managing Director,
National Highways Authority of India,
New Delhi.
- 4.The Authorized Officer &
Special District Revenue Officer,
(Land Acquisition - National Highways),
Dindigul.
- 5.The Regional Officer,
National Highways Authority of India,
Madurai.



6.The Project Director,
National Highways Authority of India,
Dindigul.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 4th respondent proceedings Na.Ka.No.24/2017/A1/CU/2018, dated 21.03.2018 and quash the same as illegal and direct the respondents to form the Chathirapptai Bye-pass road as per the 1st respondent proceedings No.RW/NH/12012/22/2005-TN/NH-8, dated 12.12.2005 starting from K.m. 36/6 and ending at K.m.39/00 of NH 209.

For Petitioner : Mr.S.Muthukrishnan

For Respondents : Mr.C.Arul Vadivel Alias Sekar
Nos.1, 3 to 6

For 2nd Respondent : Mr.M.Rajarajan
Government Advocate

ORDER

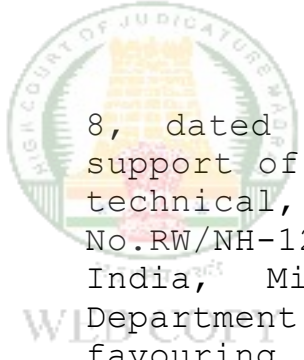
(Order of the Court was made by C.T.SELVAM, J.)

By consent, Writ Petition itself, is taken up for final disposal.

2.The Writ Petitioner seeks quash of the 4th respondent proceedings in Na.Ka.No.24/2017/A1/CU/2018, dated 21.03.2018 and to direct respondents to form the Chathirapptai Bye-pass road as per the 1st respondent proceedings No.RW/NH/12012/22/2005-TN/NH-8, dated 12.12.2005 starting from K.m. 36/6 and ending at K.m.39/00 of NH 209.

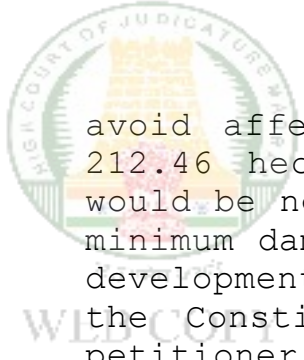
3.Heard Mr.S.Muthukrishnan, learned counsel for petitioner, Mr.C.Arul Vadivel alias Sekar, learned counsel for respondents 1, 3 to 6 and learned Government Advocate for second respondent.

4.Learned counsel for petitioner submitted that the petitioner is an agriculturist and the proposal of the fourth respondent in his proceedings No.24/2017/A1/CU/2018, dated 21.03.2018 informs intent to acquire lands for the purpose of formation of National Highways from Pollachi to Dindigul. The proposal would affect as much as 250 acres of irrigated agricultural land and adversely affect 16 irrigation wells, 50 bore wells, 50 terraced houses, 1000 coconut trees, 100 mango trees, 100 jack trees etc. Learned counsel submitted that original acquisition envisaged in proceedings No.RW/NH/12012/22/2005-TN/NH-



8, dated 12.12.2005, was beneficial to all and had the full support of villagers since none were affected thereby. Thereafter, technical, administrative and financial sanction was accorded in No.RW/NH-12011/32/2004/TN/NH-8 dated 31.03.2008 by Government of India, Ministry of Shipping, Road Transport and Highways Department of Road Transport and Highways. However, towards favouring particular interests, the fourth respondent in his proceedings No.24/2017/A1/CU/2018, dated 21.03.2018, had envisaged realignment of the proposed Highway, which would cause much inconvenience and injustice to the interest of farmers and residents. No social impact assessment study had been conducted by the respondent in keeping with the requirement of the Right to Fair Compensation and Transparency in Land Acquisition and Settlement Act, 2013. Learned counsel has dealt much on the purposes, objects and reasons behind the Right to Fair Compensation and Transparency in Land Acquisition and Settlement Act, 2013. Learned counsel submitted that resorting to mere widening of the existing road instead of resorting to acquisition afresh would avoid much harm.

5.Mr.C.Arul Vadivel alias Sekar, learned counsel for respondents 1, 3 to 6, placing reliance on the counter filed by 6th respondent and taking us through Right to Fair Compensation and Transparency in Land Acquisition and Settlement Act, 2013 informed that the present work on hand was the formation of a National Highway. He took us through the provisions of Right to Fair Compensation and Transparency in Land Acquisition and Settlement Act, 2013 and explained that Section 105 of the Act would not apply to other enactments notified in the Fourth Schedule, especially National Highways Act, 1956 (Act 48 of 1956). The respondents were acting under powers conferred under National Highways Act, 1956 and the only impact the Right to Fair Compensation and Transparency in Land Acquisition and Settlement Act, 2013 would have in the matter is regards compensation, rehabilitation and resettlement of persons affected. Learned counsel submitted that the notification issued in 2005, referred to by learned counsel for petitioner, was one for a distance of 3 kms, the same having been issued by State Government. However, the notification challenged was a Central Government notification. The same was issued by the Ministry of Road Transport and Highways Department and envisaged formation of Highways by the National Highways Authority of India from K.M. 0/000 (Dindigul) to K.M. 268/000 (Tamil Nadu / Karnataka Border). The same fell under three segments i.e. between Dindigul to Oddanchatram to a distance of 23.407, Oddanchatram to Madathukulam 45.38 Kms of which 30.925 kms was a new bye-pass road and between Madathukulam to Pollachi 42.92 kms of which 34.22 kms comprised a new bypass road. Learned counsel explained that widening of the existing road would affect business establishments and other buildings and establishments, whereas the alignment presently envisaged would



avoid affecting as many as 38 villages and acquisition of only 212.46 hectares of private and Government dry and barren land would be necessary. The alignment arrived at by experts results in minimum damage. Learned counsel further submitted that sustainable development is also a limb of life and liberty under Article 21 of the Constitution of India. Learned counsel submitted that the petitioner on 10.03.2018 made a representation seeking formation of Chathirapatti bypass. As against the petitioner's present stand of widening the present road, such representation specifically informed reservations there against.

6. In support of his contention, learned counsel relied on the following judgments of Hon'ble Supreme Court of India:

(i) ***Union of India v. Kushala Shetty [(2011) 12 SCC 69]***, wherein it is held as follows:

"28. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it is found to be ex-facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained."

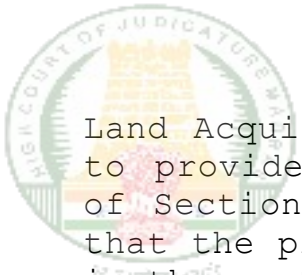
(ii) ***Ramniklal N. Bhutta & Anr v. State of Maharashtra & Others [1997 (1) SCC 134 : 2011 (8) MLJ 53]***, wherein it is been held as follows:

"10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all-round economic advancement to



make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with china economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenges are generally in shape of writ petitions filed on High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power or grant in stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lumpsum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings."

7. On consideration of rival submissions, this Court has no doubt that the writ petition is misconceived. The provisions of the Right to Fair Compensation and Transparency in



Land Acquisition and Settlement Act, 2013 are not attracted, save to provide compensation, rehabilitation and resettlement in view of Section 105 of the said Act. It is quite clearly explained that the proposed alignment for formation of the National Highways is the most beneficial one which does least harm.

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8. The judgments of the Hon'ble Supreme Court referred to, relevant portions of which also we have extracted hereinabove, would lead to irresistible conclusion that it is not for this Court to interfere in matters of present nature. It would be better to leave such issues to the decision of the experts in the field. The said two decisions/authorities arise out of challenge by invoking the familiar ground of ulterior motive. Finding no merits, this petition shall stand dismissed. Consequently, connected Miscellaneous Petitions stand closed. No costs.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar (CS-III)

To

1. The Secretary,
Union of India,
Road Transport & Highways Department
of Road Transport and Highways,
New Delhi.
2. The Secretary,
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Highways Department,
Chennai.
3. The Chairman & Managing Director,
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Madurai.



6.The Project Director,
National Highways Authority of India,
Dindigul.

+1cc to Mr.S.Muthukrishnan, Advocate Sr.No.71241

+1cc to Mr.C.Arul Vadivel Alias Sekar, Advocate Sr.No.71164

+1cc to Spl.Government Pleader Sr.No.71275

SJ

VB/KAK/SAR3/23.08.2018/7P/10C

Order made in
W.P(MD)No.11744 of 2018
and W.M.P. (MD) Nos.10667, 10668 and 11994 of 2018
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