

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Writ Petition No.11833, 11834, 12053, 12704,
12850, 12851, 12855, 13076 and 13813 of 2013
and Connected Miscellaneous Petitions

M.P.Sahabdeen ... Petitioner in W.P.No.11833 of 2013
K.V.Rajakumari @ K.V.Raju ... Petitioner in W.P.11834 of 2013
P.Ramesh ... Petitioner in W.P.No.12053 of 2013

1.P.Venkatesan ... Petitioners in W.P.No.12704 of 2013
2.Sarawathi venkatesan

M.Mohan ... Petitioner in W.P.Nos.12850 and
12851 of 2013

J.Vijaya Kumar ... Petitioner in W.P.No.12855 of 2013

1. Rajini Manohar
2. Suresh Kumar ... Petitioners in WP.No.13076 of 2013

1. Joysirajan
2. R.Saranya Esther Christina
3. R.Rosamma Ketharin
4. R.Jenitha Roselin ... Petitioners in WP.No.13813 of 2013

Vs.

1. The Principal Secretary,
State Government of Tamil Nadu,
Highways and Minor Ports (HW.1) Department,
Chennai-9.

2. The Special Deputy Collector (Land Acquisition),
Tamil Nadu Urban Development Project-III,
Poonamallee, Chennai-56.

3. The District Revenue Officer,
Revenue Department, Chennai-9.

4. The District Collector,
Chennai Collectorate,
4th Floor, Rajaji Salai,
Chennai-1. ... Respondents in W.P.Nos.11833, 11834,
12053, 12704, 12850, 12851, 13076 and
13813 of 2013

5. The Secretary,
Department of Highways and
Minor Ports, Fort St. George,
Chennai.

6. The Special Deputy Collector (L.A),
Tamil Nadu Urban Development
Project-III, Poonamallee,
Chennai 600 056.

... Respondents 1 & 2 in W.P.12855/2013

Prayer in W.P.Nos.11833 of 2013: Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in G.O.Ms.No.181, dated 02.11.2012, quash the same and further direct the respondents herein to consider acquiring poramboke lands on the northern side of the proposed alignment.

Prayer in W.P.Nos.11834, 12053, 12704, 12851, 13076 and 13813 of 2013: Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in G.O.Ms.No.181, dated 02.11.2012 and the consequential Surrender Notice, bearing No.Rc.610/2010/C1, dated 26.03.2013, passed by the 2nd respondent, quash the same and further direct the respondents to consider acquiring poramboke lands on the northern side of the proposed alignment.

Prayer in W.P.No.12850 of 2013: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in G.O.Ms.No.80, dated 24.06.2011 and the consequential Surrender Notice, bearing No.Rc.610/2010/C1, dated 26.03.2013, passed by the 2nd respondent, quash the same and consequently direct the respondents to consider acquiring poramboke lands on the northern side of the proposed alignment.

Prayer in W.P.No.12855 of 2013: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in G.O.Ms.No.181, dated 02.11.2012 in Serial No.7 of the Schedule, so far as petitioner is concerned and consequential possession notice, issued by the second respondent in Rc.610/2010/C1, dated 26.03.2013, quash the same and forbearing the respondents from interfering with

the peaceful possession to an extent of Hect. 0.00.38.5 Sq.Meters, comprised in the Old T.S.No.5/3 Part and now sub-divided T.S.No.5/11, Block No.15 of Arumbakkam Town, Egmore - Nungambakkam Taluk, Chennai District.

For Petitioner in : Mr.N.R.Chandran,
W.P.Nos.11833, 11834, 12053 Senior Counsel
12704, 13076 & 13813/2013 appearing for Mr.M.Narayanaswamy

For Petitioner in : Mr.Arulselvam
W.P.Nos.12850 & 12851/2013

For Petitioner in : Mr.L.G.Sahadevan
W.P.No.12855 of 2013

For All the Respondents : Mr.R.Vijayakumar,
Additional Government Pleader

COMMON ORDER

As common questions of fact and law are involved in all the writ petitions, they are tagged together and disposed of, by a common order.

2. The petitioners are the land owners and their lands were acquired to construct Grade Separators on Periyar EVR Salai near Aminjakari, Nelson Manickam Road Junction and Anna Nagar 3rd Avenue junction, for the purpose of constructing a Flyover and Subway in the said location. Lands which are acquired by the respondents, are given hereunder:

Petitioner in	Details of the lands acquired
W.P.No.11833/2013	Land in Survey No.3/10, now sub-divided at 3/19 at Arumbakkam Town and Egmore - Nungambakkam at Block 15 to an extent of 0.00.08.0. Another piece of land to an extent of 0.00.16.0 at the same block Survey No.3/10, now sub-divided as 3/24.
W.P.No.11834/2013	Land in Survey No.3/9, now sub-divided at 3/23 at Arumbakkam Town and Egmore - Nungambakkam at Block 15 to an extent of 0.00.02.0.

Petitioner in	Details of the lands acquired
W.P.No.12053/2013	Land in Survey No.3/10, now sub-divided at 3/19 at Arumbakkam Town and Egmore - Nungambakkam at Block 15 to an extent of 0.00.08.0, along with further piece of land to an extent of 0.00.16.0 at the same block Survey No.3/10, now sub-divided as 3/24.
W.P.No.12704/2013	Land to an extent of 0.00.35 Hectres of land, comprised of 1/3rd UDS share of land bearing New No.791, Old No.427, Poonamalee High Road, Arumbakkam, Chennai-106, comprised in T.S.No.3, Block No.11, Corporation of Madras, Division No.75 of No.107, Arumbakkam Village.
W.P.No.12850/2013	Land in Survey No.4 Part, now sub-divided as 4/2 and 4/3 at Arumbakkam Town and Egmore-Nungambakkam at Block 15 to an extent of 0.02.32.0 Sq.Ft.
W.P.No.12851/2013	Land in Survey No.4 Part, now sub-divided as 4/2 and 4/3 at Arumbakkam Town and Egmore-Nungambakkam at Block 15 to an extent of 0.02.32.0 Sq.Ft.
W.P.No.12855/2013	Land to an extent of Hect. 0.00.38.5 Sq.Meters, comprised in the Old T.S.No.5/3 Part and now sub-divided T.S.No.5/11, Block No.15 of Arumbakkam Town, Egmore - Nungambakkam Taluk, Chennai District.
W.P.No.13076/2013	Land being Plot D in T.S.No.3/6, now sub divided as 3/21, to an extent of 0.00.29.0 and further piece of land in T.ZS No.3/6, now sub divided as 3/17, to an extent of 0.00.18.2, both in Block 15, Arumbakkam Town, Egmore-Nungambakkam Taluk.
W.P.No.13813/2013	Land in T.S.No.3/15, now sub-divided as 3/25, block No.15, Arumbakkam Village, Egmore-Nungambakkam taluk, to an extent of 0.00.08.0 Sq.mt and an extent of 0.00.05.0 at 3/15, now sub-divided at 3/20 at the same block and taluk.

3. Though objections were given by the land owners, inter alia stating that the lands owned by them are patta lands for more than 40 years and they have been regularly paying property tax, water tax and other taxes, applicable to them; and that the other side of the property, which is sought to be acquired, are poramboke lands, where encroachers and unauthorized occupants are occupying the same and if acquisition is made, then the State need not even pay compensation, without considering the same, the Principal Secretary, Highways and Minor Ports (HW.1) Department, Chennai, has passed G.O.Ms.No.80, dated 24.06.2011 and G.O.Ms.No.181, dated 02.11.2012, acquiring the said lands for the purpose of construction of Grade Separators and consequently, issued a notice, bearing No.Rc 610/2010/C1, dated 26.03.2013, to surrender the lands. Against which, the present writ petitions have been filed, for the reliefs, as stated supra.

4. At the time of admission, this Court, vide order, dated 25.04.2013, made in M.P.Nos.2, 2, 2, 2, 2, 2 and 2 of 2013 in W.P.Nos.13076, 11833, 11834, 12053, 12704, 12850 and 12851 of 2013, has granted interim stay of dispossession alone. However, in M.P.Nos.2 and 2 of 2013 in W.P.Nos.12855 and 13813 of 2013, this Court has granted interim stay of further proceedings in G.O.Ms.No.181, dated 02.11.2012.

5. The Special Deputy Collector (Land Acquisition), TNUDP III, Chennai @ Poonamallee, 2nd respondent, has filed separate counter affidavits, contending inter alia that the Government in G.O.(D)No.222, Highways and Minor Ports (HW-1) Department, dated 18.11.2010, have given administrative sanction for construction of Grade Separators at the following locations, (i) Periyar EVR Salai near Aminjikarai, Nelson Manikam Road Junction, and (ii) Anna Nagar III Avenue Junction. The Government in their Order No.224, Highways (HW-2) Department, dated 05.09.2007 and Government Letter No.21471/HW-2/2007-1, dated 07.01.2008, have delegated powers to the Special Deputy Collector (Land Acquisition), Tamil Nadu Urban Development Project-III, Poonamallee, Chennai - 600 056, to issue notice under section 15(2) of Tamil Nadu Highways Act, 2001 for Tamil Nadu Urban Development Project-III and Chennai Metropolitan Development Plan in Chennai, Tiruvallur and Kanchipuram Districts.

6. Accordingly, the Divisional Engineer (Highways), Chennai Metropolitan Development Plan, Division - III, Chennai - 16, has sent two separate requisitions, for

acquisition of about 408.3 Sq.mtre and 1003 Sq.mtre., of land in T.S.No.3/6 etc., in Block No.15, 20 and 25 of Arumbakkam Town for the construction of Grade Separators at the following locations on Periyar EVR Salai near Aminjikarai, Nelson Manikani Road Junction (ii) Anna Nagar III Avenue Junction. On the above requisitions from the Highways Department for acquisition of above lands, necessary survey was made and it was decided to acquire an extent of 408.3 Sq.mtre and 1003 Sq.mtre of Rayathu Manai land in Arumbakkam Town (Block No. 15, 20 and 25) of Egmore-Nungambakkam Taluk of Chennai District.

7. The 2nd respondent has further submitted that necessary G.O.Ms.No.80, Highways and Minor Ports (HW-1) Department Dated 24.06.2011, for the acquisition of land, measuring 408.3 Sq.mtre, as Ist Part, has already been published in Tamil Nadu Government Gazette No.26, Part-II, Section-2, Dated 13.07.2011 and the valuation report for the above lands has been submitted to the Additional Chief Secretary & Commissioner of Revenue Administration and Commissioner of Land Administration (Incharge), Chennai-5 and Notices under Section 16(2) of Tamil Nadu Highways Act, 2001, have been served on the interested persons of the land under acquisition, to surrender possession of lands measuring 408.3 Sq.mtre in Block Nos.15 and 20 of Arumbakkam Town, Egmore-Nungambakkam Taluk, Chennai District. Necessary notification under section 15(2) of Tamil Nadu Highways Act, 2001, for acquisition of 1003 Sq.mtrs., of land as IIInd Part in Arumbakkam Town (Block No. 15, 20 and 25) was published as follows:

Dailies :

1. Malai Murasu, Tamil Daily Dated 03.12.2011
2. The Financial Express, English Daily Dated 03.12.2011

Locality Publication:

3. Taluk Office, Egmore-Nungambakkam -
05.12.2011
4. Revenue Inspector, Egmore-Nungambakkam -
05.12.2011
Taluk Office.
5. Office of the Divisional Engineer Highways) -
05.12.2011

Chennai Metropolitan Development
Plan Division - III, Chennai - 16.

8. The 2nd respondent has further submitted that apart from the above process, necessary notices to the land owners / interested persons over the land were also served under section 15(2) inviting objections, if any, for the proposed acquisition of the above lands referred. Enquiry for the above issue was fixed on 15.12.2011. During the specified time and also during enquiry, objection petitions have been received from 15 persons and the same were forwarded to the Requisition Body / Highways Department for their remarks. After receiving the remarks from the requisition body, all the objections were rejected by the Highways Department / Requisition body and necessary proposals for acquisition of 1003 Sq.mtres of the land under section 15(1) of Tamil Nadu Highways Act 2001 were sent to Government for approval. The Government in their G.O.(Ms).No.181, Highways and Minor Ports (HW-1) Department, dated 02.11.2012 has approved the notification under section 15(1) of Tamil Nadu Highways Act 2001 and also published the same in Tamil Nadu Government Gazette No.45, Part-II, Section-2 dated 21.11.2012.

9. It is the further case of the 2nd respondent that after the publication of Government Order, under section 15 (1) in the Tamil Nadu Government Gazette, land value has been fixed tentatively and an enquiry under section 19(2) and 19(3) was conducted by the District Revenue Officer, Chennai District, on 11.01.2013. Notices under section 16 (2) of Tamil Nadu Highways Act 2001, were served on the land owners in Cl/610/2010 dated 26.03.2013, with an instruction to deliver the possession of the land, within 30 days of the service of the notice. Consequent on the service of notice, the petitioners have filed this writ petitions.

10. The 2nd respondent has contended that when there is a public purpose, if executed, difficulties even if any should be borne by the interested persons of the lands, under acquisition on payment of compensation. When there is a land needed for public purpose, it can be acquired even if that land is classified as patta land (Rayathu Manai). Based on the alignment for the scheme only, decision can be made to acquire the patta lands or alienate / transfer the Government lands. Therefore the poramboke lands cannot be used, when they are not coming under the alignment.

11. The 2nd respondent has further contended that M/s.Chennai Bottling Company (P) Ltd., is Registered Holders, as per Revenue Records of Egmore-Nungambakkam Taluk Office for the land, measuring 232 Sq.mtrs in T.S.No.4 part, now subdivided as 4/2 of Block No.15 of Arumbakkam Town, Egmore-Nungambakkam Taluk of Chennai District, which is under acquisition and and hence, the contentions to the contra, are not acceptable. The land in question is essentially required to execute a project, which would ease out traffic congestion to a great extent and would also benefit the general public to a great extent.

12. The 2nd respondent has further contended that compensation for the above lands would be awarded to the present 13 owners, on production of original documents for the lands under acquisition. The petitioners' land would not be acquired, on free of cost and that the compensation amount would be paid to the land owners/interested persons, as per the valuation, to be approved by the Principal Secretary and Commissioner of Land Administration, Chennai. When a land is acquired for public purpose, the land owners/interested persons should make alternative arrangements, as per rules of the Government to run their business. It is the contention of the 2nd respondent that the acquired portion of land has been marked on ground in each and every survey numbers, even at the preliminary stage, ie., 15(2) notification stage and that plans might be seen by the interested persons/writ petitioners at the office of the Divisional Engineer (Highways), Chennai Metropolitan Development Plan, Division-III, Chennai 600 025.

13. The 2nd respondent has further contended that Section 19(2) enquiry to inform the land value to the interested persons of land has been conducted on 29.06.2012. After the above process, the valuation proposals have been submitted to the Principal Secretary and Commissioner of Land Administration (Incharge), Chennai-5, to approve the valuation for the lands and buildings under acquisition. All the objections of the interested persons of the lands under acquisition have already been considered on merits and rejected. G.O.(Ms) No.80, Minor Ports (HW-1) Department, dated 24.06.2011, has been issued, after fulfilling all the conditions, as per Tamil Nadu Highways Act, 2001.

14. It is further submitted by the 2nd respondent that the Government Order has been passed by the Government, only after careful consideration of all aspects. Based on the above Government Order only, the 16(2) Notice has been served on the interested persons of the land under acquisition. Only due to the alignment, lands of the interested person/writ petitioners have to be acquired, without any ulterior motive.

15. It is the further contention of the 2nd respondent that all the objections have already been considered on merits and rejected by the requisitioning body, due to the fact that acquisition of lands is inevitable and proceeded to the next stage upto the fixation of value to the land. Acquisition of lands is depending upon the alignment, which has been decided by the authorities, on technical feasibilities. Hence, it is contended that the acquisition process has been done as per Tamil Nadu Highways Act, 2001.

16. The Special Tahsildar (Land Acquisition) has further submitted that the compensation for the lands acquired, would be paid to the awardees and there are further provisions in the Tamil Nadu Highways Act, 2001, to the awardees to get higher compensation. When a public purpose is executed, difficulties should be borne by the interested persons of the lands under acquisition, on payment of compensation.

17. It is the further case of the 2nd respondent that based on the alignment for the scheme only, decision can be made to acquire the patta lands or alienate/transfer the Government lands. Therefore the poramboke lands cannot be used, when they are not coming under the alignment. On consideration of all aspects, only the alignment was arrived on technical feasibility. To provide more facilities to the General Public, Government have preferred to spend sufficient funds for execution of this project. As stated supra, all the objections have been considered on merits and rejected by the requisitioning body i.e. Highways Department, as the lands are required for public purpose.

18. The 2nd respondent has further contended that all the objections have been received by the requisitioning body, ie., Highways Department as the lands are required

for public purpose and therefore, the lands covered by the alignment have to be acquired and when the acquisition process is going to be completed by passing award, the alignment cannot be changed. When objections of the interested persons have been duly examined and rejected by the requisitioning body i.e. Highways Department, the alignment already fixed cannot be changed, as the acquisition process is completed up to valuation stage.

19. The 2nd respondent has further contended that the acquisition process has already crossed the stage of formation of alignment and therefore, no discussion is required. The acquisition process is at the stage of approval of valuation for lands, after the completion of 19 (2) enquiry participated by the interested persons of the lands under acquisition succeeding to the publication of G.O.Ms.No.181, Highways and Minor Ports (HW-1) dated 02.11.2012 and therefore, the impugned G.O.Ms.No.181 cannot be challenged on the objections already rejected by the Highways Department.

20. The 2nd respondent has further contended that the acquired portion of land has been marked on ground in each and every survey numbers even in the preliminary stage i.e., 15(2) notification stage and therefore, there is no failure on the part of the respondents by providing plans. The purpose of acquisition is clearly narrated which includes public interest. The reason for acquisition of land has been clearly mentioned in the 15(2) notification and 15(1) Government Order and therefore, the contention of the petitioners are not acceptable. In view of the above, the 2nd respondent, on behalf of other respondents, have sought for dismissal of the writ petition.

21. Thereafter, on the submissions made by the learned Additional Government Pleader, this Court on 22.11.2013, ordered as hereunder:

"Record of proceedings shows that in M.P.Nos.2 and 2 of 2013 in W.P.Nos.12855 and 13813 of 2013, this Court, by an order, dated 26.04.2013, while entertaining the abovesaid writ petitions, has granted interim stay of further proceedings in G.O.Ms.No.181, dated 02.11.2012. In respect of other seven writ petitions in W.P.Nos.13076, 11833, 11834, 12053, 12704, 12850 and 12851 of 2013, this Court in M.P.Nos.2, 2, 2, 2, 2, 2 and 2 of 2013, has granted interim stay

of dispossession alone. In all the cases, the Special Deputy Tahsildar (Land Acquisition), Tamil Nadu Urban Development Project-III, Chennai, has filed applications for vacating the abovesaid interim orders.

2. Apart from the averments made in the supporting affidavit to the vacate stay petitions, Mr.R.Vijayakumar, learned Additional Government Pleader submitted that insofar as W.P.Nos.13076, 11833, 11834, 12053, 12704, 12850 and 12851 of 2013, awards have been passed, in respect of the subject lands, determining the compensation amount. However, in respect of the lands, subject to W.P.Nos.12855 and 13813 of 2013, no proceedings have been taken, towards determination of the compensation and passing of the award.

3. Uniformity has to be maintained in the matters, pertaining to the lands acquisition proceedings. The process of determination of compensation and passing of an award, unlike in W.P.Nos.13076, 11833, 11834, 12053, 12704, 12850 and 12851 of 2013, would not affect the rights of the writ petitioners in W.P.Nos.12855 and 13813 of 2013, pending disposal of the said writ petitions. To strike at the balance between both the parties and to maintain uniformity, this Court deems it fit to modify the order made in M.P.Nos.2 and 2 of 2013 in W.P.Nos.12855 and 13813 of 2013, dated 26.04.2013. to the effect that, "there shall be an order of interim stay of dispossession alone". Liberty is granted to the respondents to initiate the process for determination of quantum of compensation and pass necessary awards, which shall be the subject to the outcome of the writ petitions.

4. The interim orders granted in M.P.Nos.2 and 2 of 2013 in W.P.Nos.12855 and 13813 of 2013, dated 26.04.2013, are modified to the abovesaid effect. Post the matter on 27.11.2013."

22. The petitioners have filed a reply, stating that G.O.Ms.No.80, dated 24.06.2011, (issued for Part I acquisition) has been issued by the 1st respondent in complete violation of the statutory provisions and it is clear from the following dates and events, which is in violation of the principles of natural justice.

Date	Details
30.11.2010	Notice under Section 15(2) by the 2nd respondent.
03.12.2010	Paper publication of Section 15(2) Notice
10.12.2010	The said Section 15 (2) Notice dated 30-11-2010 signed by the 2nd Respondent on 06.12.2010 and served on the Petitioner on 10.12.2010. The said Notice stated that the objections are to be filed within 15 days and the date of enquiry was fixed as 24.12.2010.
15.12.2010	Objections given by the petitioner
24.12.2010	Enquiry before the 2nd respondent. Enquiry not conducted in terms of Rule 5 of the Tamil Nadu Highways Rules, 2003.
25.01.2011	Letter from the Divisional Engineer to the 2nd Respondent enclosing the Reply statement for the objections. A perusal of this letter would show that the 2nd Respondent had sent the objections to the Divisional Engineer for their remarks only on 20.12.2010. It is to be seen that the Divisional Engineer has forwarded his Reply statement to the 2nd Respondent only after the conduct of the enquiry on 24.12.2010.
24.06.2011	Section 15 (1) - G.O.Ms.No.80 Highways and Minor Ports (HW1) Department issued by the 1st Respondent. A bare perusal of the G.O. would indicate that the Government did not apply its mind and it simply approved the notice submitted by the 2nd Respondent.
13.07.2011	Section 15(1) Gazettee Notification.

23. G.O.Ms.No.181, dated 02.11.2012, (issued for Part II acquisition) issued by the 1st Respondent is in complete violation of the Tamil Nadu Highways Act, 2001 and it is clear from the following dates and events that there is in violation of the principles of natural justice.

Date	Details
28.11.2011	Notice under Section 15(2) by the 2nd respondent.
03.12.2011	Paper publication of Section 15(2) Notice

Date	Details
08.12.2011	The said Section 15 (2) Notice dated 28.11.2011 was signed by the 2nd Respondent on 05.12.2011 and served on the Petitioner on 08.12.2011. The said Notice stated that the objections are to be filed within 15 days and the date of enquiry was fixed as 15.12.2011.
15.12.2011	Objections given by the petitioner
15.12.2011	Enquiry before the 2nd respondent. Enquiry not conducted in terms of Rule 5 of the Tamil Nadu Highways Rules, 2003.
02.11.2012	Section 15 (1) - G.O.Ms.No.181 Highways and Minor Ports (HW1) Department issued by the 1st Respondent. A bare perusal of the G.O. would indicate that the Government did not apply its mind and it simply approved the notice submitted by the 2nd Respondent.
21.11.2012	Section 15(1) Gazettee Notification.

24. The petitioners have further submitted that neither the Counter Affidavit nor the Typed Set of Papers filed by the 2nd Respondent indicate when the Divisional Engineer sent his Reply Statement/Remarks to the 2nd Respondent for the objections submitted in respect of Part II acquisition. However, the respondents have safely concluded that the objections dated 15.12.2011, made by the Petitioners were not forwarded to the Divisional Engineer by 2nd respondent, before the conduct of the enquiry on 15.12.2011. As in the case of Part I acquisition, it can be construed beyond any doubt that the Divisional Engineer would have forwarded his Reply Statement/Remarks, if at all, only after the enquiry.

25. The petitioners have further submitted that Rule 5 lays down the manner for publication of the public notice and the manner of conducting the enquiry and what is expected under the said Rule 5 is that,

(i) Before publishing a notice under sub-section (1) of section (15), the Government or Collector or Special Deputy Collector shall call upon the owner and any other person having interest in the land to show cause as to why the land should not be acquired;

(ii) In addition to the show cause notice, a public notice to that effect is to be published

in one English and in one Tamil newspaper having circulation in the locality ;

(iii) The said notice shall also be displayed in the offices of the Highways Authority, VAO and Tahsildar ;

(iv) If any objections are received from a person interested in the land, the Government or Collector or Special Deputy Collector shall fix a date for hearing the objections and give notice thereof to the objector as well as to the Highways Department.

(v) The Highways Department shall file on or before the date fixed by Government or Collector or Special Deputy Collector a statement by way of answer to the objections and may also depute a representative to attend the enquiry.

(vi) On the date fixed for enquiry or any other date to which the enquiry may be adjourned, the Government or Collector or Special Deputy Collector shall hear the objector and the Highways Department and record any evidence that may be produced by either parties.

(vii) On completion on the enquiry, the Collector shall submit all details of the enquiry to the Government to pass order under sub-section (3) of section 15.

26. When the statute states so, the assertion of the 2nd respondent, in the Counter Affidavit that during enquiry, objection petitions were received from 15 persons; forwarded the same to the Requisition Body / Highways Department for their remarks; after the remarks from the requisition body, necessary proposals for acquisition of 1003 Sq.mtres of the land, under section 15(1) of Tamil Nadu Highways Act 2001 were sent to the Government for approval, clearly establishes the violation of the statute and hence, prayed to quash G.O.Ms.No.181, dated 02.11.2012.

Heard the learned counsel appearing for the parties and perused the materials available on record.

27. It is not in dispute that notices have been issued to the petitioners, who are said to be the owners of the lands sought to be acquired, under Section 15(2) of the Act. On receipt of the same, the petitioners have raised

objections, before the second respondent, with regard to acquisition of the lands, said to be belonging to them. However, it is the contention of the petitioners that no proper enquiry was conducted, by the second respondent, as provided under Rule 5 of the Tamil Nadu Highways Rules, 2003. Petitioners have contended that they had raised their objections, before the second respondent, against the acquisition of the lands in question, within the time limit prescribed therein, the authority concerned had not fixed the date for the hearing the objectors, by giving notice thereof, to the objectors, as well as to the Highways Department, as stipulated in Rule 5(2) of the said Rules and that copies of the objections raised by the objectors should be forwarded to the Highways Department.

28. On receipt of the copies of the objections, the Highways Department may opt to file a statement, by way of answers to the objections raised, within the time limit prescribed for the said purpose. As per Rule 5(2) of the rules, the authority concerned shall hear the objectors and the representative of the Highways Department and record the evidence, if any, that may be produced in support of the objections and in support of the need for acquiring the land in question. Thereafter, all the details of the enquiry, shall be submitted to the Government, to pass necessary orders, under sub section 3 of section 15 of the Act, as prescribed under Rule 5(4) of the Rules. However, it has not been demonstrated, before this Court that such procedure, as prescribed under Rule 5 of the Rules, had been strictly followed, by the respondents concerned.

29. In this regard, learned Additional Government Pleader appearing for the respondents produced a copy of the paper publication and Gazette notification and the other relevant documents issued by the authorities, which establish that the notification under Section 15(1) of the Tamil Nadu National Highways Act, 2001, has been published in accordance with the provisions of Rule 5 of the Tamil Nadu Highways Rules, 2003.

30. The respondents have contended that the requirement under Section 15(2) of the Act, had been substantially complied with, as the objections raised by the petitioners were sent to the requisition body/Highways Department, for offering necessary remarks. After obtaining the remarks from the requisitioning body, the necessary proposals were sent to the Government, with a copy of the objections

received from the petitioners, along with the remarks of the Requisition Body/Highways Department. After due consideration, the Government overruled the objections raised by the petitioners and issued a Notification, under Section 15(1) of the Act, in G.O.Ms.No.181, Highways and Minor Ports (HW-1) Department, dated 02.11.2012 and had also published the same in the Tamil Nadu Government Gazette No.45, Part-II, Section-2, dated 21.11.2012. Similarly, Government have issued G.O.Ms.No.80, Highways and Minor Ports (HW-1) Department Dated 24.06.2011, for the acquisition of land, measuring 408.3 Sq.mtre, as Ist Part, which has already been published in Tamil Nadu Government Gazette No.26, Part-II, Section-2, Dated 13.07.2011.

31. Hon'ble Supreme Court in Union of India v. Kushala Shetty reported in (2011) 12 SCC 69, considered the scope of judicial review in the matters pertaining to Infrastructure Laws for developing roads and highways and to what extent Courts should exercise jurisdiction, while deciding the correctness of the land acquisition proceedings and observed as follows:

"28....the projects involving construction of new highways and widening and development of the existing highways, which are vital for the 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 the 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....."

Though the above decision was rendered while considering the land acquisition proceedings under the National

Highways Act, 1956, yet the decision of the Hon'ble Supreme Court, as regards the scope of judicial review, can very well be applied to the case on hand.

32. Government have the prerogative right to acquire the lands belonging to the individuals, for a public purpose. Respondents have followed the procedures, starting from issuing notices, under Section 15(2) till the completion of 19(2) enquiry participated by the interested persons of the lands, under acquisition, succeeding to the publication of G.O.Ms.No.181, Highways and Minor Ports (HW-1) dated 02.11.2012 and therefore, the impugned G.O.Ms.No.181 and G.O.Ms.No.80, dated 24.06.2011, cannot be challenged, on the objections already rejected by the Highways Department. Furthermore, impugned proceedings are not found to be contrary to the mandate of law or tainted due to mala fides. Hence there is no scope for interference.

33. Hence, the respondents are directed to determine and disburse the compensation to the petitioners and other persons, who are affected by the present acquisition proceedings, as expeditiously as possible. This amount shall be received by the petitioners, without prejudice to their rights to claim higher compensation in accordance with law. In the light of the above, the respondents are permitted to proceed further with the acquisition proceedings so as to complete formation of the service road. The interim order granted by this Court stands vacated.

34. In view of the above, all the writ petitions are dismissed with the above directions. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

skm
To

1. The Principal Secretary,
State Government of Tamil Nadu,
Highways and Minor Ports (HW.1) Department,
Chennai-9.

2. The Special Deputy Collector (Land Acquisition),
Tamil Nadu Urban Development Project-III,
Poonamallee, Chennai-56.

3. The District Revenue Officer,
Revenue Department, Chennai-9.

4. The District Collector,
Chennai Collectorate,
4th Floor, Rajaji Salai,
Chennai-1.

5. The Secretary,
Department of Highways and
Minor Ports, Fort St. George,
Chennai.

6. The Special Deputy Collector (L.A),
Tamil Nadu Urban Development
Project-III, Poonamallee,
Chennai 600 056.

+2ccs to Mr.Arul selvam , Advocate SR.No. 79429,79211

+1cc to Mr.M.Narayanasamy , Advocate SR.No. 80258

+1cc to Mr.V.John Aquinas , Advocate SR.No. 79087

Writ Petition No.11833, 11834, 12053, 12704,
12850, 12851, 12855, 13076 and 13813 of 2013
and Connected Miscellaneous Petitions

A.SK(30/10/2019)

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