

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER PRONOUNCED ON : 30.08.2019

CORAM: THE HONOURABLE MR.JUSTICE N.SESHASAYEE

WP.NOS.19853 OF 2011, 21429 OF 2011
WP.NOS.7124, 7125, 7870, 8572 & 35082 OF 2012
W.P.NO.4527 OF 2013 & WP.NOS.29165 TO 29168 OF 2014

AND

MP.NOS.1 & 3 OF 2011 IN WP.19853 OF 2011
MP.NO.1 OF 2011 IN WP.NO.21429 OF 2011
MP.NOS.1,1,2 OF 2012, WMP.NOS.20986 & 20308 OF 2016 IN
WP.NO.7124 & 7125 OF 2012

MP.NO.1 OF 2012, MP.NO.1 OF 2014 IN W.P.NO.7870 OF 2012
MP.NOS.1 & 2 OF 2012 IN W.P.NO.8572 OF 2012
MP.NOS.1,2 OF 2012, MP.NO.1 OF 2014 IN W.P.NO.35082 OF 2012
MP.NOS.1,2 OF 2013, M.P.NO.1 OF 2014 IN W.P.NO.4527 OF 2013
AND MP.NOS.1 TO 1 OF 2014 IN W.P.NOS.29165 TO 29168 OF 2014
MP.NOS.2 TO 2 OF 2014 IN WP.NO.29165 TO 29168 OF 2014

WP.No.19853 of 2011:

N.R.Marappan

.... Petitioner

-Vs-

1. The District Collector
Collectorate Office
Erode District.
2. The District Revenue Officer cum
Land Acquisition Officer
Erode.
3. The State of Tamil Nadu
Rep by its Secretary
Highways and Minor Ports Department
Fort St.George, Chennai-9.

.... Respondents

[R3 impleaded as per order dated 30.08.2011 in
MP.No.2 of 2011 in WP.No.19853 of 2011]

W.P.No.21429 of 2011 :

1.C.Gowtham

2.T.M.Chinnasamy

.... Petitioners

-Vs-

1. The Secretary to Government
Highways Department
Fort St.George, Chennai - 600 009.
2. The Chief Engineer (Highways)
Project Wing
Panagal Building, Saidapet
Chennai - 600 015.
3. The Superintending Engineer (Highways)
Project Wing, Coimbatore.
4. The District Revenue Officer-cum-
Land Acquisition Officer
Erode District, Erode.
5. N.K.K.P. Raja
[5th respondent impleaded as per order dated 7.9.2012
in M.P.No.2/2011 in W.P.No.21429/2011]

WP.Nos.7124, 7125, 7870, 8572 of 2012 & 4527 of 2013:

- | | |
|---------------------|---|
| 1.A.Sampooranam | ... Petitioner in W.P.No.7124 of 2012 |
| 2.S.Balasubramaniam | ... Petitioner in W.P.No.7125 of 2012 |
| 3.R.Kuppusamy | ... Petitioner in W.P.No.7870 of 2012 |
| 4.N.Muthusamy | ... 1 st Petitioner in W.P.No.8572 of 2012 |
| 5.P.Kavitha | ... 2 nd Petitioner in W.P.No.8572 of 2012 |
| 6.E.Menaha | ... 3 rd Petitioner in W.P.No.8572 of 2012 |
| 7.M.Saranya | ... 4 th Petitioner in W.P.No.8572 of 2012 |
| 8.C.Subramaniam | ... Petitioner in W.P.No.4527 of 2013 |

-Vs-

1. The Secretary to Government
Highways Department
Fort St.George, Chennai - 600 009.
2. The District Revenue Officer cum
Land Acquisition Officer
Erode District, Erode.

3. The Chief Engineer (Highways)
Project Wing
Panagal Building, Saidapet
Chennai - 600 015.

... Respondents in all W.Ps.

WP.No.35082 of 2012 :

1.P.Natarajan
2.N.Bagyalakshmi

.... Petitioners

-Vs-

1. The State of Tamil Nadu
Rep by Secretary to Government
Highways and Minor Ports (HS.I) Department
Fort St.George, Chennai - 9.

2. The District Collector
Erode District, Erode.

3. The District Revenue Officer
& Land Acquisition Officer
Erode District, Erode.

.... Respondents

W.P.No.29165 to 29168 of 2014 :

M.Subramanian (Deceased)

1.S.Jeyamani
2.S.Kokila
3.S.Sudha

[Petitioners 2 and 3 are substituted as Lrs of
deceased M.Subramanian as per order dt.21.12.2017
in WMP.No.18994/2017 in WP.No.29165 of 2014]

.... Petitioners in WP.No.29165 of 2014

4.Balasubramaniam	... 1 st Petitioner in WP.No.29166 of 2014
5.Vijayabharathy	... 2 nd Petitioner in WP.No.29166 of 2014
6.Nachimuthu Gounder	... Petitioner in WP.No.29167 of 2014
7.T.M.Chinnasamy	... Petitioner in WP.No.29168 of 2014

-Vs-

1. The State of Tamil Nadu
Rep by Secretary to Government
Highways Department
Fort St.George, Chennai - 9.

2. The District Collector
Erode District.

3. The District Revenue Officer
& Land Acquisition Officer
Erode.

.... Respondents in all Wps

Prayer in WP.No.19853 of 2011 :-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records on the file of the second respondent in Proc.No.Na.Ka.No.7247/2007 A1 dated 01.08.2011 and quash the same therein as illegal, incompetent, irregular and unconstitutional.

Prayer in WP.No.21429 of 2011 :-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 1 to 4 to change the road alignment from K.M.11.4 in the Erode Outer Ring Road from Rangampalayam to Erode-Coimbatore Highways as per the original alignment formed in the year 2001 and not to acquire the petitioner's land without following due process of law and consider the petitioner's objection regarding the change of alignment.

[Prayer amended as per order dated 07.09.20102 in MP.No.1 of 2012 in WP.No.21429/2011]

Prayer in WP.Nos.7124 & 7125 of 2012:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to consider the petitioner's objection for change of alignment in respect of Erode Bypass Road Project between the Erode-Poondurai Road and Erode-Perundurai Road and pass suitable orders thereby changing the alignment.

Prayer in WP.No.7870 & 8572 of 2012 :

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the first respondent, in and by his proceedings in G.O.(2D) No.10, Highways and Minor Ports (HS-1) Department, dated 31.03.2011, so far as the petitioner's/petitioners' land in R.S.No.146/4B in Pudur Village, Erode Taluk and District and quash the same.

Prayer in WP.No.35082 of 2012:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, declaring the proceedings of the first respondent in G.O.(D) No.50 dated 03.04.2012 followed by publication in Tamil Nadu Government Gazette No.17 dated 02.05.2012 in respect of Intem No.69, 70, 71 and also consequential proceedings of the second respondent in Na.Ka.No.7247/2007/A1 dated 01.10.2012 as arbitrary against the principles of natural justice and also against the provisions of Tamil Nadu Highways Act and Rules.

Prayer in WP.No.4527 of 2013:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Direction, calling for records of the first respondent in respect of notification issued under Section 15(1) of the Tamil Nadu Highways Act in G.O.(D) No.50 Highways and Minor Ports Department dated 03.04.2012 and quash the same in respect of the petitioner's land in R.S.No.653/1B2 "C" Village in Erode and consequently direct the respondent not to acquire the lands of the petitioner.

Prayer in WP.No.29165 of 2014:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for records relating to the order of the third respondent in proceeding No.Na.Ka.7247/07/A1 dated 20.10.2014 and quash the same.

Prayer in WP.No.29166 of 2014:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the proceedings of the third respondent dated 25.10.2010 in Na.Ka.No.7247/07/B1 and the subsequent paper publication in proceedings of Na.Ka.7247/2007/B1 dated 28.01.2011, published in Daily Thanthi, Erode Edition on 30.1.2011 and the consequent proceedings in Na.Ka.No.7247/2012/B1 dated 03.12.2011 and the order of the first respondent in G.O.(D) No.275, Highways and Minor Ports (HS-1), 31.12.2013, which was published in Government Gazette dated 05.2.2014 and quash the same in so far as the petitioners land in R.S.No.325'/3B, Puthur Pudupalayam Village, Erode Taluk and District measuring an extent of 0.36.5 acres, is concerned. [Amended as per order dated 20.7.2016 in MP.No.1 of 2015 in WP.Nos.29166 to 29168 of 2014]

Prayer in WP.No.29167 of 2014:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating paper publication issued by the third respondent in proceedings Na.Ka.7247/2007/B1 dated 28.01.2011, in Daily Thanthi, Erode Edition on 30.1.2011 and the consequent proceedings in Na.Ka.No.7247/2012/B1 dated 09.09.2014 and the order of the first respondent in G.O.(D) No.275, Highways and Minor Ports (HS-1), 31.12.2013, which was published in Government Gazette dated 05.2.2014 and quash the same in so far as the petitioners land in R.S.No.341/2B, Puthur Pudupalayam Village, Erode Taluk and District measuring an extent of 03100sq mtrs. [Amended as per order dated 20.7.2016 in MP.No.1 of 2015 in WP.Nos.29166 to 29168 of 2014]

Prayer in WP.No.29168 of 2014:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the proceedings of the third respondent dated 25.10.2010 in Na.Ka.7247/2007/07/B1 and the subsequent paper publication in proceedings Na.Ka.7247/2007/B1 dated 28.01.2011, published in Daily Thanthi, Erode Edition on 30.1.2011 and the consequent proceedings in Na.Ka.No.7247/2012/B1 dated 3.12.2012 and the order of the first respondent in G.O.(D) No.275, Highways and Minor Ports (HS-1), 31.12.2013, which was published in Government Gazette dated 05.2.2014 and quash the same in so far as the petitioners land in R.S.No.323/2, Puthur Pudupalayam Village, Erode Taluk and District measuring an extent of 03725 sq mtrs.

[Amended as per order dated 20.7.2016 in MP.No.1 of 2015 in WP.Nos.29166 to 29168 of 2014]

For Petitioner : Mr.V.Raghavachari
(in WP.No.19853 of 2011)

For Petitioner/Petitioners : Mr.K.Surendranath &
(in WP.No.21429 of 2011 Mr.S.Dhanasekaran
& WP.No.7125 of 2012)

For Petitioner/Petitioners : Mrs.P.T.Ramadevi
(in WP.Nos.7124, 7870 &
8572 of 2012 and 4527 of 2013)

For Petitioners : Mr.R.Shivakumar for
(in WP.No.35082/2012) M/s.K.M.Vijayan Associates

For Petitioners : Mr.R.Gandhi, Senior Counsel
(in WP.Nos.29165 to Asst.by Mr.R.G.Narendhiran
29168 of 2014)

For Govt. Respondents : Mr.P.H.Arvind Pandian
(in all WPs.) Additional Advocate General
Assisted by Mr.C.Thirumaran,
Special Government Pleader

For R5 : Mr.N.Manokaran
(in WP.No.21429/2011)

COMMON ORDER

1. All these writ petitions have one object in common: To resist the acquisition of their lands under the provisions of the Tamil Nadu Highways Act, 2001 (hereinafter in short "Act"). The acquisition relates to a project involving the formation of an Outer Ring Road for a distance of 14.8 km. through Pudur Pudupalayam Village, in Erode "C" Village, Erode. It starts from Kokkarayanpettai, Tiruchengode Taluk, Namakkal District, and connects various highways at Erode-Karur Road, Erode-Kangayam Road, Erode-Chennimalai Road, Erode-Perundurai Road at Tindal, and pass through Chithoode, Bhavani, and joins the National Highways to reach Tiruchengode.

2.1 The pleadings are however not identical, so are the prayer. It varies from a challenge to notices for surrender of properties under Section 16(2) of the Act merely, to a challenge to the declaration made under Section 15(1) of the Act. There is also allegations of non-service of personal notices under Section 15(2) of the Act, and non-conduct of enquiry under Rule 5 read along with Section 15(3) of the Act. There was also an allegation in few petitions that a road was proposed to be formed along the dead alignment to accommodate the lands of a then Minister of the State Government, the alignment was changed. The change of alignment and want of inadequate hearings prior to the issuance of notification under Section 15(1) would broadly constitute the allegations herein.

2.2 Based on the allegations, the petitions can be grouped :

W.P.No.	Nature of W.P.	Prayer
19853 of 2011	Certiorari	Challenge to notice under Sec.16 (2) on the ground notice under Sec.15(2) was not given. [15(1) declaration issued Vide G.O.No.15 dated 27.4.2011]
21429 of 2011	Mandamus	For a direction not to acquire without following Sec.8 of the Act. Allegation of malafide directed against 5 th respondent, at whose instance alignment was changed.
7124 of 2012 7125 of 2012 7870 of 2012 8572 of 2012 4527 of 2013	Mandamus/ Certiorari	To consider the petitioner's objection for change of alignment of the proposed road, as Sec.15(1) notification was passed without considering the objections of the petitioners in terms of Sec.15(3) of the Act.
35082 of 2012	Declaration	Challenge to 15(1) on the allegation that objections under Sec.15(3) was not considered and that it was in violation of Sec.8 of the Act. Sec.16(2) notice challenged consequently.
29165 of 2014	Certiorari	Challenge to notice under Sec.16 (2) on the ground no notice was given under Sec.15(2) and that alignment was changed due to the influence of a politician and consequently notification under Sec.15 (1) is bad.
29166 of 2014 29167 of 2014 29168 of 2014	Certiorari	Challenging to notification under Sec.15(1) on the allegations: (I) That issuance of personal notice under Sec.15(2) and paper publication are on different dates which is a procedural violation. (ii) Denial of effective opportunity to present objection under sec.15(2); (iii) Effective hearing in terms of Rule 5 has not taken place.

2.3 As shown in the table, the reliefs sought in the petitions ultimately challenge Sec.15(1) notifications on grounds: (a) That no notification is issued under Sec.8 of the Act, fixing highway boundary line, building line and control line; (b) No notice under Sec.15(2) was issued, or objections of the petitioners were not considered (which includes cases where notices are issued under Sec.16(2) of the Act to few of the petitioners requiring them to surrender possession of their respective properties).

3. Explaining the importance of the project, and detailing the administrative decisions taken to implement the project, the respondents place their defense to the allegations made in the petition as below:

- Notice under Sec.15(2) of the Act, and the objections of the petitioners have been received. The core allegation therein was that a road now available could be used, and a demand has been made for change of alignment. Besides the technical difficulty in utilising the existing road for the project, using the same might also affect more residential buildings. The present alignment was designed as per the Indian Road Congress Standard, taking also into account the future requirement based on an assessment of volume of future traffic.
- Neither a declaration under Sec.3 nor a notification under Sec. 8 are mandatory pre-requisite to acquire lands.
- Notices under Sec.15(2) were properly given and objections were received, and a decision on the proposed alignment of road now designed (and currently under implementation) is based on technical input.

The Arguments:

A. Submissions for the Petitioners:

4. The arguments advanced on behalf of the petitioners are substantially the same, though in specific cases there is some marginal variance. All the submissions are therefore, consolidated and bullet-pointed as below:

- For the formation of the Outer Ring road, the Authority concerned ought to have opted for widening an existing road. This apart, the Authority has abandoned an earlier alignment at the instance of a former Minister in the then State Government, and hence it is malafide done.
- So far as the petitions in W.P.7124/2012, 7125/2012, 7870/2012, 8572/2012 and 4527/2013 are concerned, it was

only after the enquiry in terms of Sec.15(2), public notice through newspaper-publications were made. This is contrary to the procedure. The other petitioners contend that their objections were not considered under Sec.15(3) of the Act. When the law directs how a certain act shall be done, it shall be done only in that manner and no other. Procedure should not be relegated to a formality, stripping it of its statutory sanctity. The petitioners in W.P.29165/2014 to 29168/2014 also submit that the decision under Sec.15(3) was taken by the Divisional Engineer and the Land Acquisition Authority, and not the Government. Reliance was placed on the authorities in Kunwar Pal Singh (dead) by Lrs., Vs State of U.P. [(2007)5 SCC 85], Union of India & Others Vs Shiv Raj & Others [(2014) 6 SCC 564], Dev Sharan & Others Vs State of U.P. & Others [(2011) 4 SCC 769] and R. Natarajan & Others Vs Union of India [2010-5-L.W.868].

- The petitioners in W.P.29165 of 2014, in particular, were not served with any notice under Sec.15(2) of the Act. This is bad in law. Reliance was placed on the ratio in State of Tamil Nadu & another Vs K.S.Narayanan [2007-1-LW 81], K.G.Parthasarathy & another Vs The State of Tamilnadu [2016(5) CTC 536].
- The declaration of highway under Sec.3 of the Act, and following it with a proceeding to fix the highway boundary line, building line and control line are condition precedent for acquiring the land. Notwithstanding the view taken by this Court that proceedings under Sec.8 is not a pre-requisite for acquiring lands under Sec.15(1) of the Act in R.Kumar & Others Vs State of Tamil Nadu [2006(4) CTC 640 : (2007)2 MLJ 384 (DB)], Jayaram & Others Vs State of Tamil Nadu [(2014) 4 MLJ 685], and CeeDee Yes Standard Towers (P) Ltd., Collector of Chennai, [2016 SCC OnLine Mad 25335], the same cannot be considered as conclusively decided. In Kumar's case, the First Bench of this Court has only gone into the question, if the lands can be acquired under Sec.15 of the Act to widen an existing road, when the said road is already part of the Master Plan prepared in terms of the Town Planning Act, and it was required to resolve what was considered to be a conflict between two State enactments. In deciding the issue, the Division Bench has not dealt with the point if a notification under Sec.8(3) of the Act was mandatory before notifying the acquisition of lands under Sec.15 of the Act. While the learned Single Judge [A.Kulasekaran.J.,] in Kumar's case has touched upon this issue, the fact remains that ultimately this Order of the learned Single Judge has merged with the Order of the

Division Bench, and inasmuch as the Division Bench has not considered it, the views of the learned Single Judge may not be considered as a binding ratio. So far as Jayaraman case goes, it, though relied on the Division Bench decision in Kumar's case, for the reasons already stated, it cannot be said to have laid the law correctly. And, CeeDee Yes case relies again on Kumar's case (DB) and Jayaraman case, and hence what applies to Jayaraman's case also applies to it. On the other hand, in R.Moorthy Vs Sate of Tamil Nadu & Others [2014 (2) CWC 763], the learned Single Judge has pointedly considered if notification under Sec.8 was a mandatory precondition for acquiring lands under Sec.15 of the Act, and this deserves to be considered.

- In WP.Nos.29165 to 29168 of 2014, the petitioner had purchased the property prior to the date of Sec.15(2) notice, and was not served with notice.

B. Submissions for the Respondent:

5. The learned Additional Advocate General argued:

- (a) Fixing the alignment of a proposed road is not as easy as drawing a line in a piece of paper, but is done on the basis of multivarious technical inputs. And, once done, and it is done by experts and professionals in the field, the Court may not sit in judicial review over the same. While, the decision to have an Outer Ring Road to de-congest the traffic is a policy-decision of the Government, how to implement it belongs to the experts in the field, and the statutory mechanism providing for acquisition of lands is only a means to achieve the end, for the larger interest of the public. Unless any mandatory violations of statutory procedure prescribed for acquisition of lands is made out, Courts may not interfere with the same. And, the objection on alignment is not one of them.
- (b) Secondly, the opportunity in the procedural space to object to an intended acquisition, does not imply that the objection should necessarily be accepted. When the Government makes a decision under Sec.15(3), it balances the benefit that flows out of a project to the general public, the need for acquiring the lands for the purposes of the project, and the quality of objections made by the land owners.
- (c) Thirdly, the argument that a notification under Sec.8 is mandatory in character and that it operates as a pre-requisite to an acquisition under Sec.15 is concerned, it is no more res integra. To state that in Kumar's case the

First Bench had not incorporated the reasoning of the learned Single Judge on this point should not be understood as if the Division Bench had rejected the reasoning of the learned Single Judge. And, it is hence, both in Jayaraman case and in CeeDee Yes case (post its remand, to be detailed later), this Court did not ignore the reasoning of the Single Judge in Kumar case and also how in Moorthy's case, the learned Judge did not distinguish the ratio in Jayaraman case.

6. Petitioners' reply:

In Sannarangappa Vs State of Karnataka [(2017)12 SCC 797 : (2017) 5 SCC (Civ) 348], the Hon'ble Supreme Court has held that fixing highway boundary, building line and control line is required to be done before acquisition is attempted.

The Discussion

7. The points argued to resist the acquisition are not new, nor are they unfamiliar to the Court. The argument on either side may be categorised into: (a) A scope of enquiry under Rule 5 and the effect of Sec.15(3); (b) If notification under Sec.8 is a mandatory and inviolable prerequisite to acquisition under Sec.15; (c) Not serving notice Sec.15(2).

On the Enquiry under Rule 5 and Sec.15(3) of the Act

8.1 In Titanium Equipment & Anode Manufacturing Company Ltd & Others Vs The State of Tami Nadu & Others [2018 (4) CTC 814], this Court had an occasion to hold:

"10.1 The initial proposal for acquisition is conveyed under Section 15(2) of the Act. This may be equated to Section 4(1) of the Land Acquisition Act, 1894. The power to finalise on the acquisition is granted to the Government under Section 15(3). In between, an enquiry is statutorily contemplated where objections are invited from the owners of those lands which are proposed to be acquired, hear the Highways Department on the said objection, and if they come out with any tangible material in answer to the objections filed by the land owners, the same shall be made available to the latter and thereafter, to let both the sides place necessary material in support of their respective contentions and then to forward all the materials to the Government. In other words, the nature of enquiry contemplated in Rule 5 is not directed at deciding the proprietary right of the land owners. Here this Court finds merit in the argument of learned Additional Government Pleader when he submitted that the scope of enquiry is limited to obtaining necessary materials both in aid of and opposing acquisition and then forwarding

them to the Government for it to take a decision under Sec.15(3) of the Act. It may be added that the enquiry contemplated under Rule 5 can never be stretched into a judicial enquiry of adversarial character, or equated to one intended for deciding the rights of the parties on a preponderance of probabilities. If it were to be construed thus, it would impact the power of eminent domain drastically and adversely.

10.2 Having obtained the materials under Rule 5(4), it is the Government that takes the decision to acquire or not to acquire, and given the statutory scheme of the Tamil Nadu Highways Act, right to pre-acquisition hearing extends only to the extent of providing materials for the decision of the Government under Sec.15(3) of the Act, and not to participate in the process of decision making by the Government. Here, the following passage of the Hon'ble Supreme Court from *Maneka Gandhi Vs Union of India* and *Another* [(1978) SC 597], is apt in the context. (at page 629)

"63. Now, it is true that since the right to prior notice and opportunity of hearing arises only by implication from the duty to act fairly, or to use the words of Lord Morris of Borth-y-Gest, from 'fair play in action', it may equally be excluded where, having regard to the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provision, fairness in action does not demand its implication and even warrants its exclusion. There are certain well recognised exceptions to the audi alteram partem rule established by judicial decisions and they are summarised by S.A. de Smith in *Judicial Review of Administrative Action*, 2nd Edn. at pages 168 to 179. If we analyse these exceptions a little closely, it will be apparent that they do not in any way militate against the principle which requires fair play in administrative action. The word 'exception' is really a misnomer because in these exclusionary cases, the audi alteram partem rule is held inapplicable not by way of an exception to 'fair play in action', but because nothing unfair can be inferred by not affording an opportunity to present or meet a case. The audi alteram partem rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law 'lifeless, absurd,

stultifying, self-defeating or plainly contrary to the common sense of the situation'. Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the audi alteram partem rule would, by the experimental test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands. But at the same time it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands

" (emphasis supplied)

11. If the arguments of the petitioners' counsel is scanned for its merit, it must be said that they never came forward with a case that they have not been heard under Rule 5(2) and Rule 5(3).... As stated already, no authority is required to hold an enquiry in the nature of a judicial proceeding to decide on the merit of the objections of the land owners or the quality of materials provided by him. From the Government's stand point, notwithstanding the merit of the objections of the land owners, there may still be a larger public interest that might outweigh the merit of the land owners' objection. The Government, vested with power of eminent domain, for advancing a larger public purpose cannot be restricted by the objections of the land owners alone. Within the limited space provided for pre-acquisition hearing contemplated under Rule 5, the respondent has fulfilled their statutory obligations..."

8.2 The above passage sums up the scope of the enquiry contemplated pursuant to the objections submitted to notices under Sec.15(2) of the Act, and this is apposite here. Seen in the backdrop, is it given to the petitioners to insist that their objection should prevail over the decision on the alignment based on the inputs provided by the experts? In fact, owing to the protest by the public to the present alignment, especially by those landowners who would be affected by the acquisition, a meeting is seen convened on 10-12-2013, in which experts have expressed their opinion on the non-viability of utilising the existing road, and changing the alignment along the existing road. This Court cannot sit in judicial review over the expert's opinion on the nature of alignment designed.

8.3 Here, it may have to be stated that the decision of the Land Acquisition Authority purported to be made under Sec.15(3) of the Act dated 19-07-2013 may not be of great consequence, for if it were one, there would not have been a reason to convene a meeting subsequently by the District Collector on 10-12-2013. Besides this, even the argument that the proposed alignment was made to facilitate a certain Minister of the then Government to save his property appears misconceived, for on record, the experts back the present alignment giving their reasons. If the unsubstantiated allegations of malafide alleged against a Minister is to be taken seriously, then it would well end up in discounting the expertise of the experts in the field. On this ground, the petitioners fail.

If notification under Sec.8 a recondition for acquisition:

9. On this point, this Court was introduced to what the petitioners would contend as oscillating views of different learned Judges of this Court. It is now necessary to go for a breezy walk the talk with the law that this Court has attempted to settle.

- The earliest of the cases in this branch of law, oft quoted, which set the tone for further decisions, was R. Kumar Vs State of Tamil Nadu & Others. The fundamental question involved was if the State Government can ignore the boundary line of the road as fixed in the Master Plan prepared under Tamil Nadu Town & Country Planning Act, 1971 while exercising its power to acquire the land under Sec.15 of the Tamil Nadu Highways Act, 2001. One of the argument advanced before the learned Single Judge was that fixing the highway boundary, building line and control line in terms of Sec.8 of the said Act is a condition precedent for acquiring lands for the purposes of a highway under Sec.15 of the Act. This was rejected by the learned Single Judge (A. Kulasekaran J) on the ground that Sec.8 fall in Chapter III, and Sec.15 fall under Chapter IV of the Act, and that they occupy different spheres of operation, and the latter is not dependent on the former. This was challenged before the First Bench of this Court, which Vide its Order in R.Kumar & Others Vs State of Tamil Nadu [2006(4) CTC 640 : (2007)2 MLJ 384] confirmed the order of the learned Single Judge.
- However, in CeeDee Yes Standard Towers (P) Ltd., Collector of Chennai [2013(1) CWC 425], (will be referred to as CeeDee Yes - I case) a learned Single Judge of this Court (T.Raja.J), had taken a different view, when he held that notification under Sec.8 is a precondition to acquisition under Sec.15 of the Act. The ratio was founded on the

principle that when the statute provides a procedure for doing certain things, anything done contrary to the same is arbitrary. The pendulum started oscillating and law on the issue appear not to have been settled.

- In Jayaram & Others Vs State of Tamil Nadu [(2014) 4 MLJ 685], when another learned Single Judge (S.Manikumar.J) faced with the same argument, but confronted by the different views expressed by this court in Kumar's case [2006(4)CTC 640] and CeeDee Yes-I case, the learned Judge opted for the view of the Division Bench in Kumar's case. The oscillating pendulum still did not stop.
- The argument that had been raised and addressed by this Court in the cases earlier mentioned, was yet again raised in R. Moorthy & Others Vs State of Tamil Nadu and Others [2014 (2) CWC 763] before yet another Single Judge of this Court. The views of this court in Kumar's case (DB), CeeDee Yes-I case and Jayaraman case were placed before the Court. Now the learned Single Judge (R. Mahadevan J) would hold that, in the context of the minimum land requirement-criterion for acquisition of lands for highways purposes that he was required to decide, the judgment in Jayaraman case might not have any application, and proceeded to hold that Sec.8 compliance was a pre-requisite for acquisition under Sec.15 of the Act. The pendulum seems to show no sign of stopping.
- In this scenario, an appeal was preferred against the Order in CeeDee Yes-I case, and the matter came to be remanded back, and was decided in CeeDee Yes -II case [2016 SCC OnLine Mad 25335]. In its judgment, another Single Judge (T.S.Sivagnanam.J) of this Court has opted to follow the judgment of this Court in Kumar's case (DB) and Jayaraman's case and also laid emphasis on the fact that in R. Moorthy's case, the learned Single Judge who decided the matter, did not choose to differentiate the law laid down in Jayaraman case.

10. It now appears that the predominant view of this Court is that Sec.8 compliance is not a pre-requisite, nor a condition precedent for invoking the power of eminent domain under Sec.15 of the Act. It is here, the petitioner bring in the authority of the Hon'ble Supreme Court in Sannarangappa Vs State of Karnataka [(2017)12 SCC 797], to keep the oscillation of the pendulum going.

11.1 Sannarangappa arises out of a challenge from the judgment of the First Bench of the Karnataka High Court in Sri. Sannarangappa Vs The State of Karnataka [ILR 2013 Karnataka

4903]. The challenge there was to the Constitutionality of Sec.15 of the Karnataka Highways Act, 1964, which authorised the Government to acquire lands for purposes of highway. (It is substantially similar to Sec.15(1) of the Tamil Nadu Highways Act.) The challenge inter alia was on the point that Sec. 15 of the said Act (contrary to Sec.15(2) and 15(3) of the TN Act) did not provide for an opportunity of hearing prior to resorting to acquisition. This was negated by the Karnataka High Court.

11.2 Dealing with the same question on the absence of an inbuilt provision for pre-hearing before acquiring land under Sec.15 of the Karnataka Highways Act, on an appeal, the Hon'ble Supreme Court had analysed the scheme of the Act and observed that if notices have been given when the building line or the control line is fixed in terms of Sec.7 of the Act, (which is substantially same as the Sec.8 of the Tamil Nadu Highways Act), then fresh notice need not be given before invoking Sec.15 of the Karnataka Act. Para 6 of the judgment of the Hon'ble Supreme Court in Sannarangappa Vs State of Karnataka [(2017) 12 SCC 797] reads:

"6. From the above narration of the relevant provisions of the Act it clearly transpires that Section 15 of the State Act is a midway provision that the statute contemplates. What is of significance and which impacts the right of the landowners is the notification under Section 7 of the State Act fixing the highway boundaries, the building lines and the control lines. In respect of such an exercise notice under Section 7 (2) of the State Act is contemplated whereby opportunity is given to the landowners to file their respective objections upon consideration of which the proposal can be modified or even abandoned. If at the stage of issuing notification under Section 7 such an opportunity is to be given, once the aforesaid stage is over and the map under Section 8 is published, acquisition of land as and when necessary under Section 15 is a consequential effect. At that stage, really a second opportunity to object to the acquisition need not be afforded in view of the opportunity already granted under Section 7(2). We, therefore, cannot find any error in the ultimate conclusion recorded by the High Court though our concurrence with the said conclusion is on slightly different grounds, as indicated above."

11.3 What is instantly noticeable is that the Hon'ble Supreme Court was not required to consider if a notification fixing road boundaries, building line and control line is a

condition precedent for invoking the power of acquisition. Sec.15 of the Karnataka Act does not provide for a pre-hearing before the Government declares its intention to acquire the land, and given the context, the Hon'ble Supreme Court, while sustaining the Constitutionality of the said provision, has held that if there had been a hearing when the notification was issued under Sec.7 of the Karnataka Act, [When the Tamil Nadu Act is compared with its parallel provision in Karnataka Act, Sec.15(2) of the T.N. Act, read with Rule 5 of the Tamil Nadu Highways Rules provide for a pre-hearing before a notification under Sec.15(1)], a hearing need not be duplicated for acquisition under Sec.15.

12.1 Now let Sec.8 of the Act be analysed on its plain language. Sec.8 reads:

8. Power to fix highway boundary, building line, control line etc., :-

(1) The Highways Authority of any division may, by notification, in relation to any highway or any area in that division, where the construction or development of a highway is undertaken or proposed to be undertaken, fix-

(a) the highway boundary, building line, or control line; or

(b) the highway boundary and the building line; and

(c) the building line and the control line:

Provided that before the publication of the notification under this sub-section, a draft of the said notification shall be published inviting objections, if any, on the proposed fixation.

(2) The draft of the notification under sub-section(1) shall contain -

(a) all details of lands situated between the highway boundary line and the control line proposed to be fixed and in the case of new works, the lands and persons benefited by the construction or development of such highway; and

(b) notice requiring all persons likely to be affected by such notification, to make their objections or suggestions, if any, in writing, with respect to the issue of such a notification, to the Highways Authority within such period as may be prescribed.

(3) After considering the representation, if any, received under sub-section (2), the Highways Authority may, with the approval of the State Highways Authority -

- (i) drop the proposal to fix the highway boundary, the building line or the control line; or
- (ii) publish the final notification under sub-section (1) with such modifications as may be considered necessary.

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), the Government may, in consultation with the State Highways Authority, having regard to the situation or the requirements of any highway or the condition of the area through which such highway passes, -

- (a) fix different building line and control line for such highway; or
- (b) refrain from fixing the building line or control line for such highway or portion thereof.

Sec.8 (1) provides that the Highways Authority of any division may, by notification, in relation to any highway or any area in that division, where the construction or development of a highway is undertaken or proposed to be undertaken, fix the highway boundary line, building line and control line. The use of the expression 'may', to start with, appears to make the exercise contemplated under Sec.8 directory and not mandatory.

12.2 If the Highway Authority considers it necessary to fix the boundary line, building and control lines, then the procedure contemplated under Sec.8(2) have to be followed. And, now it will become part of the procedure to issue notice, and invite objections from those who are likely to be affected by the proposed fixing of highway boundary line, building and control lines. This may also include cases of new works, in which case, the lands and persons benefited by the construction or development of such highway may also have to be notified for the benefit of the objectors. But, and to repeat, this is contemplated, only where the Highway Authority decides to fix the highway boundary, building and control lines and not otherwise. It is hence necessary to understand the relative space the statute has provided for the operation of Sec.8 and Sec.15 as elucidated by the learned Single Judge in Kumar case is relevant. This passage reads:

"13. The contention of the petitioners is that if the highway boundary line is declared under Section 8 after calling for objections and thereafter the notification under Section 3 is issued, then the road with the enhanced boundary will come well within the scope of acquisition under Section 15 of TNH Act, in other words, without preceded by a notification under Section 8 fixing the new boundary line, the declaration under Section 3 restrict the power of acquisition only to the extent of old boundary. It is replied by the respondents that Chapter III of the TNH Act dealing with 'restriction of ribbon development' i.e., restriction of construction activity on either side of a notified highway: that the power of the State Government to fix such boundary lines etc., is a discretionary power and is not a mandatory one; that the section itself makes it clear that the Highways authority of any division 'may' by notification fix boundary lines etc., that sub-section 4 of the said section makes it even more clear that notwithstanding anything contained in Section 1 to 3 the Government may in consultation with the State Highways Authority even refrain from fixing any building line or control line for such highway or portion thereof; that there is no mandate for the Government or the Highways authorities to take any action under Section 8 prior to Section 15 (2) of TNH Act; that the action relating to prevention of ribbon development has nothing to do with the acquisition proceedings under Chapter IV, which will be more clear on a perusal of Chapter VI which specifically deals with payment of compensation of any person affected by a proceeding under Chapter III and if the contention of the petitioners are correct, then there is no need for providing any separate clause for compensation since Chapter IV contains separate provisions for the same.

14. Chapter III relates to 'restriction of ribbon development'. The said chapter contains Section 8 to 14. As per Oxford Dictionary. 'ribbon development' means the building of house along a main road. According to Websters Third New International Dictionary, 'ribbon development' means a system of buildings built side by side adjoining that follow in succession along a road. The headings 'restriction of ribbon development' prefixed to set of Sections 8 to 14 makes in clear that the highways authority of any division may by notification where the construction or development of a highway is undertaken or proposed to be undertaken; fix highway boundary; building line and

control line after publishing draft notification inviting objections; impose restriction of building construction after notification'; grant exemption for the building already constructed and in case the said building is dismantled while re-construction, order to be set back to the building line or control line; may by notification regulate or divert any existing right of access to highways; preparation of maps and empowers highways authority and other officers to enter upon survey and take measurements etc., It is evident that Chapter III only dealing with 'restriction of ribbon development'. The powers under Chapter III is discretionary powers and is not mandatory one.

15. Chapter IV relates to acquisition of property which contains Sections 15 to 25. Under the said chapter, if the Government are satisfied that any land is required for the purpose of any highway or for construction of bridges, culverts, causeways or other structures thereon or for any purpose incidental or ancillary thereto, in furtherance of the objects of this Act, they may acquire such land by publishing in the Tamil Nadu Government Gazzette after entertaining objections from the owners or the interested persons of the land and the land so acquired shall vest with the Government free from all encumbrance. Any land acquired in this Act, the Government may use or cause to be used such land for the purpose of this Act. Every owner or person interested in any land required under this Act shall be entitled to receive and be paid an amount. If any person is aggrieved by the decision of the Collector in determining the amount may within 60 days from the date of such decision seek for reference to civil Court as defined in the Land Acquisition Act, 1894. The said Chapter also deals with apportionment of the amount, payment of amount, investment of amount by depositing in Court, payment of interest and power of entry. Thus, the chapter IV is an independent one for acquisition of property and also for payment of compensation amount to the land owners and therefore the contentions of the petitioners that notification under Section 8 is sine qua non for initiating acquisition proceedings is untenable, hence the said ground is rejected."

Given the distinctive zone of operation of Sec.8 and Sec.15, and given the nature of question that the Hon'ble Supreme Court was required to decide in Sannarangappa case, this Court is of the view that Sannarangappa case operates in a slightly different situation, and may not be apt for application here.

And this Court holds that a notification under Sec.8 is not a precondition to initiate acquisition under Sec.15 of the Act.

13. It is seen that the proposed Outer Ring road has been laid for a substantial distance, and the project is stated to have been held up due to the resistance of the petitioners here. Barring the objection on alignment of the proposed road, which this Court has rejected already. In this backdrop atleast one petitioner he was not served a notice under Section 15(2) of the Act. Since the project is midway through its implementation, and has consumed considerable public money, even if this argument is entertained, it will have the effect of repeating the acquisition-procedure for this petitioner. In real terms, this will be a profitless exercise, though it will be in strict conformity with law. But, ultimately the acquisition has to happen, for substantial public money has been invested in the project and the project itself has been substantially completed. In that eventuality, the only question would be one of just compensation to which this petitioner is entitled to. Instead of postponing it, the same compensation can still be paid.

14. It is an admitted fact, thanks to the interim orders passed, awards in none of these cases have been passed. However, awards could not be now passed under Tamil Nadu Highways Act, 2001, since the Act stands repealed under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30/2013) (hereinafter would be termed as Right to Fair Compensation Act). The attempt to have it preserved by inserting Sec.105-A alongside the Schedule V to the Right to Fair Compensation Act 30/2013 to save the Tamil Nadu Highways Act alongside couple of other special legislation of the State legislature failed since a Division Bench of this Court has held against the legislative validity of Sec.105-A of the Right to Fair Compensation Act in Caritus India, represented by the Diocesan Director Vs Union of India [2019(4)CTC 737]. The said decision however, has saved those acquisitions where the lands are put to use. Here is a case where substantial stretch of the property acquired have already been utilised. And, in this Order, this court has only upheld the legality of the acquisition proceedings that have been initiated under the Tamil Nadu Highways Act. Therefore, essentially, the acquisition has to be saved since the project for which acquisition was made is substantially completed. But the compensation still remains to be paid. This has to be now done necessarily in terms of the Right to Fair Compensation Act. Therefore, this Court directs that awards be passed in terms of Right to fair Compensation Act within a period of six months from the date of receipt of copy of this order.

15. In conclusion, subject to the direction in the preceding paragraph, all the writ petitions are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

1. The District Collector
Collectorate Office
Erode District.
2. The District Revenue Officer cum
Land Acquisition Officer
Erode.
3. The State of Tamil Nadu
Rep by its Secretary
Highways and Minor Ports Department
Fort St.George, Chennai-9.
4. The Chief Engineer (Highways)
Project Wing
Panagal Building, Saidapet
Chennai - 600 015.
5. The Superintending Engineer (Highways)
Project Wing, Coimbatore.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.75381
+1cc to Mr.N.Manokaran, Advocate, S.R.No.75807
+1cc to Mrs.P.T.Ramadevi, Advocate, S.R.No.76616
+1cc to Mr.R.G.Narendhiran, Advocate, S.R.No.75362
+1cc to the Government Pleader, S.R.No.76243

+3cc to Mr.R.G.Narendhiran, Advocate, S.R.No.75362 (06.02.2020)

WP.Nos.19853 of 2011, 21429 of 2011
WP.Nos.7124, 7125, 7870, 8572 & 35082 of 2012
W.P.No.4527 of 2013 & WP.Nos.29165 to 29168 of 2014

SSP(CO)
CS/17/12/2019