

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.4466 of 2019

&

W.M.P.Nos.5041, 5042, 6914 of 2019

Malladi Drugs and Pharmaceuticals Limited,
Represented by its Authorized Signatory,
Having registered office at 9, G.S.T Road,
ST. Thomas Mount, Chennai,
Tamil Nadu - 600 016.
Petitioner

Vs

- 1.The Union of India,
Rep. by its Principal Secretary,
Ministry of Road Transport and Highways,
New Delhi - 110 001.
- 2.The Chairman,
National Highways Authority of India (NHAI),
G-5 & 6, Sector 10, Dwaraka,
New Delhi - 110 075.
- 3.The District Collector,
Office of the District Collector,
Vellore District - 632 004.
- 4.The Special District Revenue Officer(in-charge),
National Highways (Land Acquisition),
Vellore - 632 009.
- 5.The Deputy General Manager & Project Director,
(Project Implementation Unit),
National Highways Authority of India,
Salem Main Road, Krishnagiri.
- 6.The Regional Officer,
National Highways Authority of India,
Regional Office, Guindy, Chennai.
- 7.The Technical Manager,
National Highways Authority of India,
Regional Office, Chennai.

Respondents

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a writ of Certiorari calling for the records of the 1st Respondent relating to the impugned Notification vide Ref. No.Na.Ka.No.G4/2/2016, dated 06.03.2018 issued under Section 3A(1) of the National Highways Act, 1956 and the consequential Impugned notification under sub section (2) of section 3D of the National Highways Act, 1956 published in Central/Union Gazette in Ref No.743.S.O.865(E) in Part II - Section 3 sub section(II) dated 13.02.2019., quash the same as illegal, arbitrary and devoid of merit, in so far as the lands of the petitioner herein contained in Survey Nos.263/2A, 263/2B, 263/3A1A, 263/BA1B, 263/3A2, 263/3B, 263/3C, 264/2, 264/3A, 264/3B, 266/2, 266/4, 267/3, 283/1A1, 285/1B of Vanapadi Village, Walajapet Taluk, Vellore District.

(prayer amended as per order of Court, dated 11.03.2019, vide W.M.P.No.6903 of 2019)

For Petitioner : Mr.Sathish Parasaran,
Senior Counsel for Mr.Cibi
Vishnu

***Mr.R.Rajesh Vivekananthan**
Senior Central Government Panel
Counsel for R1

For Respondents : Mr.Su.Srinivasan, ASG,
for RR1 &2 and RR5 & 6

Mr.D.Raja, AGP
for R3 & R4

ORDER

By consent of both sides, this Writ Petition is taken up for final disposal.

2 Writ Petition is filed praying to issue a writ of Certiorari calling for the records of the 1st Respondent relating to the impugned Notification vide Ref. No.Na.Ka.No.G4/2/2016, dated 06.03.2018 issued under Section 3A(1) of the National Highways Act, 1956 and the consequential Impugned notification under sub section (2) of section 3D of the National Highways Act, 1956 published in Central/Union Gazette in Ref No.743.S.O.865(E) in Part II - Section 3 sub section(II) dated 13.02.2019., quash the same as illegal, arbitrary and devoid of merit, in so far as the lands of the petitioner herein contained in Survey Nos.263/2A, 263/2B, 263/3A1A, 263/BA1B, 263/3A2,

263/3B, 263/3C, 264/2, 264/3A, 264/3B, 266/2, 266/4, 267/3, 283/1A1, 285/1B of Vanapadi Village, Walajapet Taluk, Vellore District.

3 The grievance of the petitioner is that the first respondent/Union of India has issued a notification under Section 3A (1) of the National Highways Act, 1956 and the National Highways Laws (Amendment) Act, 1997 in Ref.No.Na.Ka.No.G4/2/2016, dated 06.03.2018, stating that they had decided to acquire lands, part of which are the petitioner company's land, for the purpose of extending the national highways.

4 It is the further case of the petitioner company that the proposed alignment plan of the respondents bifurcated the manufacturing facility of the petitioner company and that if it is implemented the manufacturing facility of the petitioner company will have to be closed. Therefore, the petitioner vide letter dated 04/02/2019, submitted two alternative alignment plans, with respect to the expansion of the highway roads, to the respondents herein. Subsequent to the said representation, the Impugned notification, dated 13.02.2019, under sub section (2) of section 3D of the National Highways Act, 1956 was published in Central/Union Gazette in Ref No.743.S.O.865(E) in Part II - Section 3 sub section(II).

5 The learned senior counsel for the petitioner submitted that the alternative alignment proposals submitted by the petitioner on 04.02.2019, is more economically viable and feasible and that the same has to be considered by the respondents for expansion of the highway road. The above said proposal is submitted prior to the impugned notification under sub section (2) of section 3D of the National Highways Act, 1956. The petitioner has not objected within the prescribed time.

6 According to the respondents, the land is required for the aforesaid expansion of road, since the impugned notification, dated 13.02.2019, under sub section (2) of section 3D of the National Highways Act, 1956 has been issued. Therefore, at this stage, the petitioner cannot challenge the impugned notification.

7 The learned senior counsel appearing for the petitioner would submit that without going into merits, the alternative land proposal feasibility has to be considered by an expert body and it would solve the grievance of the Petitioner.

8 The learned Assistant Solicitor General appearing for the respondents 1, 2, 5 and 6 would submit that the petitioner submitted the objection beyond the prescribed time, thus, authority published the final 3D Notification.

9 In this regard, it is relevant to note that this Court by an order dated 09.05.2018, in W.P.No.11902 of 2018 has observed as follows:

"8.If any such representations/objections are received from the petitioner, then the competent authorities are bound to consider the same as per the procedures as contemplated under the Act. In this regard, the petitioner at liberty to submit any further representation or additional grounds to the competent authorities within two(2) weeks from the date of receipt of a copy of this order. If any such additional grounds are furnished the same also should be considered along with the objections/representations already submitted by the writ petitioner.

9.However, this being the legal principles are being followed and the right of property is subject to the acquisition laws enacted by the State or the Union. The authorities competent undoubtedly to follow the procedures contemplated under the Act. However, in the present writ petition the notification issued under Section 3A in under challenge and therefore, the authorities hereafter has to consider the objections and take a decision and proceed with the acquisition process in accordance with law, if necessary, by providing a personal hearing to the writ petitioner."

10 In the aforesaid case, the Petitioner challenged 3(A) Notification and this court held that the authorities competent has to follow the procedures contemplated under the Act. Taking into consideration the facts and submissions, this Court is of the view that no prejudice will be caused to the respondents, in considering the petitioner's representation with regard to the alternative alignment proposal for acquiring the lands. Accordingly, the respondents shall appoint the technical expert persons to explore the possibility of utilising the alternative land. Based on the report submitted by the expert persons, the respondents shall pass orders and the same shall be communicated to the Petitioner.

11 Therefore, in the present case, by consent of both the parties, this Court directed the technical expert body to look into the feasibility of accepting any one of the

alternative alignment plan submitted by the petitioner company. But, considering the limited scope of the request made by the petitioner herein, this Court is inclined to pass the following orders:

(i) The respondents are directed to consider the petitioner's objection/representation dated 04.02.2019 and to take a decision and communicate the said decision to the petitioner within four weeks from the date of receipt of a copy of this order.

(ii) It is made clear that in the terms of the notification vide Ref.No.Na.Ka.No.G4/2/2016, dated 06.03.2018, and notification under sub section (2) of section 3D of the National Highways Act, 1956, dated 13.02.2019 are subject to the decision of the expert report.

(iii) The writ petition is disposed of with the above direction. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

(iv) Till the final decision is taken in respect of the above said objection/representation made by the petitioner, the respondents shall not take any coercive action against the petitioner.

s/d-
Assistant Registrar(CO)
Dated: 26.04.2019

*** Corrected as per letter
dated 18.09.2019
sd/-Sub Assistant Registrar
Dated: 24.09.2019.**

True Copy

Sub-Assistant Registrar

tsg
To

1.The Union of India,
Rep. by its Principal Secretary,
Ministry of Road Transport and
Highways,
New Delhi - 110 001.

To be Substituted to the
order already despatched
on 29.04.2019

2.The Chairman,
National Highways Authority of India
(NHAI),
G-5 & 6, Sector 10, Dwaraka,
New Delhi - 110 075.

3.The District Collector,
Office of the District Collector,
Vellore District - 632 004.

4.The Special District Revenue Officer(in-charge),
National Highways (Land Acquisition),
Vellore - 632 009.

5.The Deputy General Manager & Project Director,
(Project Implementation Unit),
National Highways Authority of India,
Salem Main Road, Krishnagiri.

6.The Regional Officer,
National Highways Authority of India,
Regional Office, Guindy, Chennai.

7.The Technical Manager,
National Highways Authority of India,
Regional Office, Chennai.

+1cc to Mr.R.Rajesh Vivekananthan, Advocate, S.R.No. 22870

+1cc to Mr.Su Srinivasan, Advocate, S.R.No.23067

+1cc to Mr.CIBI Vishnu, Advocate, S.R.No. 23388

+1cc to the Government Pleader, S.R.No. 23217

W.P.No.4466/2019

&

W.M.P.Nos/5041,5042,6914/2019

AD(CO)
GN(26/04/2019)
SP(24/09/2019)

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