

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON: 06.03.2019

DELIVERED ON: 18.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**W.P. (MD) No.7807 of 2015****and W.M.P.Nos.1 and 2 of 2015**

WEB COPY

A.Chelladurai

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep. by its Secretary,
Department of Highways,
Fort St. George, Secretariat,
Chennai - 600 009.
- 2.The Project Director,
TamilNadu Road Development Project-II,
No.171, South Kesava Perumalpuram,
Greenways Road,
Raja Annamalaipuram,
Chennai - 600 028.
- 3.The District Collector,
Tirunelveli District,
Tirunelveli.
- 4.The Special District Revenue Officer,
(Land Acquisition),
TamilNadu Road Development Project-II,
Tiruchirappalli.

... Respondents

Prayer:

Writ Petition has been filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, call for the records pertaining to the impugned notification of the 4th respondent in Na.Ka.297/2014/A2, dated 30.12.2014, published in Tamil Daily Dinamani dated 04.01.2015, quash the same in so far as the land and building of the petitioner in Natham S.No.423/2D1 in Alangulam, Tirunelveli District is concerned, and consequently forbear the respondents not to deprive the land and building of the petitioner.

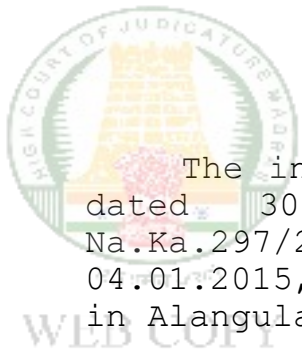
For Petitioner : Mr.S.S.Thesigan

For Respondents : Mr.K.Chellapandian

Additional Advocate General,

Assisted by Mr.M.Rajarajan,

Government Advocate

**ORDER**

The instant Writ Petition has been filed challenging the order dated 30.12.2014, passed by the fourth respondent in Na.Ka.297/2014/A2, published in Tamil Daily 'Dinamani' dated 04.01.2015, in respect of the petitioner land in Natham S.No.423/2D1 in Alangulam, Tirunelveli District.

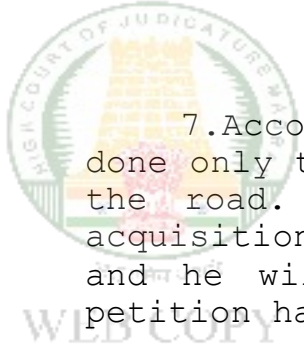
2.It is the case of the petitioner that the State of Tamil Nadu considering the population and traffic, decided to upgrade the State Highway SH-39, in the stretch of Tirunelveli to Tenkasi, under the Tamil Nadu Road Development Project-II. As per the project, the road between Tirunelveli and Tenkasi, presently two way lane is to be upgraded as a four way lane.

3.According to the petitioner, to implement the project of the first and second respondent, the fourth respondent issued the impugned notification dated 30.12.2014, under Section 15(2) of the Tamil Nadu Highways Act, 2001 (Act 34 of 2002), which was published in Tamil Daily 'Dinamani' on 04.01.2015. According to the petitioner, as per the notification, the patta lands adjacent to the Highway 39 in Alangulam Taluk will be acquired for the purpose of laying four way lane. The notification also specified the extent of land proposed to be acquired in the respective survey numbers.

4.According to the petitioner, the fourth respondent instead of acquiring the lands on both sides of the road, proposed to acquire the land on the southern side alone in Alangulam. According to the petitioner, due to the above proposal, the traders and the public who are owning the lands and buildings are seriously affected. According to the petitioner, he is owning a land and building in S.No.423/2D1 and is running an Auto Consultancy in the said premises. According to him, his whole family is dependent for livelihood on the Auto Consultancy business.

5.It is the case of the petitioner that the fourth respondent for the project of the second respondent decided to acquire the petitioner's land being 0.0692 square meter out of 0.12.13 hectares in S.No.423/2D1 as per the impugned notification dated 30.12.2014, published in Tamil Daily 'Dinamani' on 04.01.2015.

6.It is also the case of the petitioner that he participated in a public hearing conducted by the Government, seeking the views of the affected land owners and in the said public hearing, the petitioner along with other traders and residents requested the fourth respondent to acquire the land on both sides of SH-39 in Alangulam in order to minimize the loss to the traders and residents in the southern side of the road. But, according to the petitioner, under the impugned notification dated 30.12.2014, the fourth respondent notified the proposed acquisition of land only at the southern side of the road in the Alangulam Town leaving the northern side of the road.



7. According to the petitioner, the above Act was *malafide* and done only to safeguard some vested interests in the northern side of the road. It is the case of the petitioner that the proposed acquisition at the southern side will substantially affect his trade and he will be left in lurch. In such circumstances, the writ petition has been filed.

8. A counter affidavit has been filed by the fourth respondent, wherein, it is stated that during the public consultation meeting held in Alangulam on 19.08.2014, representations were made by the land owners and only after due consideration of the claims made by them in the meeting and on consultation with the Divisional Engineer (H), Tamil Nadu Road Sector Project-II, Tirunelveli, due replies were given to them in the meeting itself on 19.08.2014, clearly explaining that the proposed alignment has the minimal impact.

9. The fourth respondent has also stated that there is no vested interests involved in the acquisition proceedings. Further, the fourth respondent has stated that the petitioner was given opportunity for personal hearing on 16.02.2015, but, he did not avail the same but only deputed his son Martin Dinesh Raj. According to the fourth respondent, the guidelines issued in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the Act, 2013") was followed in this land acquisition.

10. It is the case of the fourth respondent that the proposed acquisition is legal and constitutional and done only for the welfare of the general public. According to them, the acquisition of land on southern side of the road is not arbitrary and it is in order as per the geometrical improvements. It is their case that further curve improvement is proposed in order to avoid frequent accidents ahead of Alangulam Town.

11. It is also their case that the land acquisition is proposed as per approved alignment plan which satisfies the technical requirements. It is also the case of the fourth respondent that no environmental clearance is required to improve or upgrade the road in the proposed acquisition, as there is no Reserve Forest, Coastal Zone, Wildlife Sanctuary and Bird Sanctuary.

12. The fourth respondent has also stated that the common object of upgrading road facilities to the public is undertaken by the Tamil Nadu Road Sector Project with loan assistance from the World Bank. The prime objective of the project is minimum acquisition of land and minimum disturbances to the existing features. The design and alignment has optimum utilization of existing road with minimal land acquisition. According to the fourth respondent, the implementation of the project has generated substantial employment opportunities both directly as well as indirectly as this is an inter-state road between Tamil Nadu and Kerala connecting Tirunelveli - Tenkasi - Kollam.



13. According to them, on completion, the project is likely to result in major savings in fuel and maintenance cost. Further, the fourth respondent states that during Sabarimala temple season, the vehicle traffic in this road is very high. A survey on traffic projection for next 20 years was conducted in this road and only thereafter the proposal for conversion from two lane traffic to four lane traffic was finalised.

14. The fourth respondent further states that the land required for the project has been acquired under the provisions of the Tamil Nadu Highways Act, 2001 (hereinafter referred to as "the Act, 2001"), but the compensation for the affected land owners will be paid according to the provisions laid down in the new Act, 2013. According to the fourth respondent, after the completion of the road laying project, public can make comfortable and faster journey.

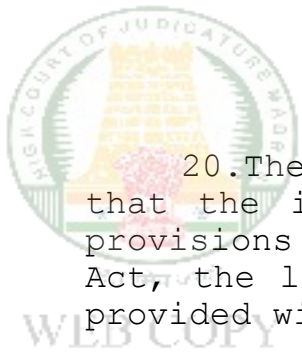
15. Heard, Mr.S.S.Thesigan, learned counsel for the petitioner and Mr.K.Chellapandian, learned Additional Advocate General for the respondents.

16. The only point for consideration is whether there is arbitrary exercise of power under the Tamil Nadu Highways Act, 2001, by the state in the acquisition of the lands belonging to the land owners including the petitioner's land at S.No.423/2D1 in Alangulam, Tirunelveli District for the proposed widening of the roads from the existing two lanes to the four lanes in the State Highways Road SH-39 Tirunelveli - Tenkasi Road from Km.5/000 to Km.50/600 in Pudur and some other villages in Tirunelveli, Alangulam and Tenkasi Taluk, Tirunelveli District.

17. According to the learned counsel for the petitioner, the acquisition is tainted with *malafides* since the acquisition is proposed only on the southern side of the existing road with the intention to save the properties of some vested interests in the northern side of the road. According to him, the entire stretch of the road except in Alangulam Town, properties at both sides of the road were acquired. He further submitted that if the lands on both sides are acquired, the damage to the petitioner as well as other property owners on the southern side will have lesser impact.

18. According to the learned counsel for the petitioner, the public hearings under Section 15(2) of the Tamil Nadu Highways Act, 2001 were not properly conducted and it was only an eyewash. According to him, no social impact study was carried out by the State before the acquisition proceedings.

19. According to the learned counsel for the petitioner, he is having an Auto Consultancy business in a part of the land and building under the proposed acquisition. According to the learned counsel for the petitioner, the family of the petitioner is entirely dependant on the income from the Auto Consultancy business for their livelihood.



20.The learned counsel for the petitioner further contended that the impugned notification is violative of the object of the provisions of the Act, 2013. According to him, under the Central Act, the loss to the land owners is lesser as the land owners were provided with adequate alternative sites for their livelihood.

21.Further, the learned counsel for the petitioner contended that the Act, 2001 (Act 34 of 2002) being repugnant to the Central Act 30 of 2013 and both the legislations having been enacted in furtherance of Entry 42 of the Concurrent List, the State enactment is void insofar as it provides for acquisition of land by operation of Article 254 of Constitution of India and thus, the acquisition of property under the State enactment is vitiated by malice in law.

22.Per contra, the learned Additional Advocate General for the respondents would submit that only to ease the traffic congestion, it was proposed to widen the existing two lanes State Highways 39 to four lanes connecting Tirunelveli - Tenkasi from Km.5/000 to Km.50/600 in Alangulam and Tenkasi Taluk of Tirunelveli District. According to the learned Additional Advocate General, the State has complied with all the statutory requirements under the Act, 2001, and has protected the interests of the land owners by causing minimal loss to them.

23.According to the learned Additional Advocate General, the notice under Section 15(2) of the Act, 2001, was published on 04.01.2015, calling for objection from the land owners whose lands were proposed to be acquired. The learned Additional Advocate General further submitted that the petitioner's land extent is only 0.0692 sq.meters in S.No.423/2D1 of Alangulam Village, out of the total 2,26,504 sq.meters of lands covered under the land acquisition proceedings for the proposed road expansion project.

24.The learned Additional Advocate General would further submit that the petitioner's son Mr.Martin Dinesh Raj appeared for 15(2) enquiry on 16.02.2015 and submitted his objection. According to the learned Additional Advocate General, while 15(2) enquiry was in progress, the petitioner approached this Court by filing the instant writ petition.

25.The learned Additional Advocate General drew the attention of this Court, to Section 114 of the Central Act 30 of 2013, and submitted that the said Act repeals only the Land Acquisition Act, 1894. He further submitted that Section 103 of the Central Act specifically provides that the provision of the Central Act shall be in addition to and not in derogation of any other law for time being in force.

26.The learned Additional Advocate General drew the attention of this Court to G.O.(Ms.)No.88 Revenue [LA-I(1)] Department dated



21.02.2014 and the appropriate legislature which came out with the Bill "the Act, 2013 (Tamil Nadu Amendment) Act 2014", seeking exemption under Section 105 of Central Act 30 of 2013, by including the following Tamil Nadu enactments:

- (a) Tamil Nadu Acquisition of land for Industrial Purposes Act, 1997;
- (b) Tamil Nadu Highways Act, 2001; and
- (c) Tamil Nadu Harijan Welfare Act, 1978.

27.The learned Additional Advocate General submitted that the said Bill got the Presidential assent on 01.01.2015 and accordingly, the Tamil Nadu Legislative Assembly enacted Act 1 of 2015, thereby inserting Section 105-A, by which the provisions of the Central Act, 2013 in its application to the State of Tamil Nadu shall not apply to the enactments relating to land acquisition specified in the Fifth Schedule namely, the Tamil Nadu Highways Act, 2001, the Tamil Nadu Land Acquisition for Industrial Purposes Act, 1997 and the Tamil Nadu Harijan Welfare Act, 1978.

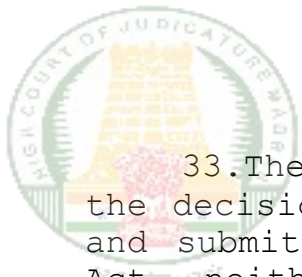
28.The learned Additional Advocate General would further submit that the strengthening and widening of Tirunelveli - Tenkasi SH-39 is a World Bank funded project undertaken by the Tamil Nadu Road Sector Project-II under the Public Private Participation Scheme (PPP). According to him, the project length of the road is 45.60 Kms and is beneficial to the people visiting the area as well as the State of Kerala.

29.According to the learned Additional Advocate General, out of 38 packages covering 21 main villages involved in the acquisition proceedings, except Alangulam, the land acquisition proceedings were completed and a sum of Rs.19,38,33,744/- was paid as compensation to around 3,000 land owners. In addition to the compensation, the rehabilitation and resettlement component in terms of the new Land Acquisition Act, 2013 were paid to the persons interested.

30.According to the learned Additional Advocate General, the lands were taken possession and the roads were formed by the State Highways Department. According to him, due to filing of the present writ petition and the order of status quo, the road project could not be completed for the past four years.

31.According to the learned Additional Advocate General, the World Bank norms stipulate that 100% land area has to be handed over to the concessionaire within 6 months of the appointed date, failing which the Government will be under obligation to pay penalty to the concessionaire.

32.The learned Additional Advocate General cited the following authorities for the proposition that public interest will prevail over private interest: **(a) AIR 1998 SC 591, (b) 2012 AR SCW 189 and (c) (1997) 1 SCC 134.**



33.The learned Additional Advocate General further relied upon the decision of Hon'ble Supreme Court reported in **2017 (3) SCC 313** and submitted that once the proceedings were initiated under KIAD Act, neither Section 11-A of the old Land Acquisition Act nor S.No.24(2) of the new Land Acquisition Act would be applicable and therefore, the proceedings initiated under KIAD Act would not lapse, even if no award has been passed within two years from the date of publication of final declaration.

34.The learned Additional Advocate General submitted that the Act, 2001, is similar to KIAD Act and therefore, applying the same principle, the proceedings initiated by the State under the Act, 2001 is valid.

35.The learned Additional Advocate General also referred to the following orders passed by this Court:

(i)WP(MD)Nos.9161 to 9164 etc. of 2012 dated 04.04.2013:

He submitted while referring to the above decision that in an identical issue relating to construction of over head bridge at Abisekapuram village, Lalgudi, this Court held that it is not for the Court to scan the materials and arrive at a different conclusion that the service roads do not require the width of 12.75 meters on either side. The alignment for the railway over bridge was approved by the alignment committee and it was only thereafter a decision to provide service road was taken. It was only in public interest such a decision was taken by the authorities and hence dismissed the writ petitions.

(ii)WP(MD)Nos.7413 etc. of 2015:

While referring to the above decision, he submitted that in a similar prayer, this Court was pleased to dismiss the writ petitions relating to formation of laying fly over bridge in Thoothukudi district by observing that the notice issued under section 15(2) of Highways Act after coming into force of Right to Fair Compensation and Transparency Act, 2013 is perfectly legal as per the amendment bill 2014.

(iii)WA No.1462 and 1463 of 2013 dated 22.06.2015:

While referring to the above decision, he submitted that the Division Bench of this Court refused to accept the contention of the Appellant that the Highways Act, 2001 lapses on account of the enforcement of the Central Act and held that the said contention is liable to be rejected on the simple ground that the provisions of Act, 2001 is saved under provisions of Sections 105-A of the Central Act, by the incorporation of the Tamil Nadu Amendment Act, 2015.

(iv)WP(MD)No.8250 of 2015 dated: 09.02.2016:

<https://hcservices.ecourts.gov.in/hcservices/>
While referring to the above decision, the learned Advocate General submitted that Court dismissed the writ petition by imposing cost of Rs.25,000/- to the Petitioner by observing that just because



few individuals are aggrieved, the project which will benefit thousands cannot be permitted to be stalled for technical reasons, which also have been found to be false.

(v) WP (MD) No. 8181 and 8182 of 2003 dt. 17.02.2017:

While referring to the above decision, the learned Advocate General submitted that a similar issue relating to the another State enactment, namely, the Tamil Nadu Land Acquisition for Harijan Welfare Schemes Act, one of the three acts covered under Act 1 of 2015, this Court in WP Nos. 8181 and 8182 of 2003 dated 17.02.2017, held that the repugnancy has been cured by the enactment of Tamil Nadu Act 1 of 2015.

DISCUSSION:

36. The impugned notification was issued under Section 15(1) of the Act, 2001. Section 15 of the Act reads as follows:

15. Power to acquire land - (1) *If the Government are satisfied that any land is required for the purpose of any highway or for construction or 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 Gazette a notice specifying the description of such land and the particular purpose for which such land is required.*

(2) *Before publishing a notice under sub-section (1), the Government shall call upon the owner and any other person having interest in such land to show cause within such time as may be specified in the notice, why the land should not be acquired. The Government shall also cause a public notice to be given in such manner as may be prescribed.*

(3) *The Government may, after considering the cause, if any, shown by the owner or other person having interest on such land, pass such an order under sub-section (1), as they may deem fit.*

37. The impugned notification has been issued to widen the road and convert the two lane road into a four lane road. It is also not disputed by the petitioner that opportunity was given to all the land owners including the petitioner to raise objections regarding the proposed land acquisition under the Act, 2001. The statement of the fourth respondent that the petitioner was represented by his son Martin Dinesh Raj at the time of enquiry under Section 15(2) has also not been disputed by the petitioner.

38. The learned Additional Advocate General appearing for the respondents produced a map disclosing the acquired lands for the road widening at Alangulam village, in which the petitioner's land

falls in S.No.423/2D1 in the southern side.

39.As seen from the map, there is no exclusion of neighbouring acquired lands leading to the petitioner's land. The lands acquired for the purpose of road widening at Alangulam does not reveal any arbitrary exclusion of lands from the land acquisition. Further, the proposed project for road widening is funded by the World Bank and therefore, only after obtaining expert technical reports and feasibility reports, the lands required for road widening project would have been acquired by the State Government. As seen from the map, the alignment on both the northern side and the southern side in Alangulam village where the petitioner's lands falls is symmetrical and there is no gap of unacquired lands in the stretch on both sides of the road.

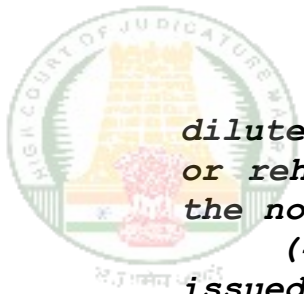
40.The petitioner has also not substantiated his contention that only with vested interests, the respondents have acquired the lands on the southern side of the road alone excluding the northern side by providing any authenticated documentary evidence. The petitioner's land which has been acquired measure only 0.0692 sq.meters, whereas the total lands acquired by the respondents is 2,26,504 sq.meters.

41.It is also contended by the respondents that the majority of the land owners at Alangulam village whose lands have been acquired have not disputed the land acquisition. This fact has also not been seriously disputed by the learned counsel for the petitioner. Having obtained assent from the President of India on 01.01.2015 in terms of the Section 105 of the Act, 2013, the right to fair compensation Act, 2013 shall not apply to the Tamil Nadu Highways Act, 2001, as it is one of the scheduled Act under the Fourth Schedule of the Act, 2013. Section 105 of the Act, 2013 reads as follows:

105.Provisions of this Act not to apply in certain cases or to apply with certain modifications.- (1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

(2) Subject to sub-section (2) of section 106 the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or



dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.

42. However, as per Section 105-A (2) of the Act, 2013, the compensation to the land owners payable for the lands acquired under the Tamil Nadu Highways Act, 2001, remain the same as that of the lands acquired under the Act, 2013. Therefore, for acquisition of lands under the Tamil Nadu State Highways Act, 2001, the social impact assessment, rehabilitation and resettlement norms mandatory under the Act, 2013 is not applicable. The compensation amount for the lands acquired for the Act, 2001 is alone determined as per the provisions of the Act, 2013 and other provisions are not applicable to the State Act.

43. It is settled law that judicial review over matters involving technical or commercial aspects where expert knowledge is required cannot be entertained. The Courts are not experts in the fields of land acquisition for public purpose. They cannot decide as to which land is feasible and which are not. It is the domain of the experts and policy makers to take a call. Therefore, this Court cannot interfere with the wisdom of the policy decision taken by the Executive wing of the State. Unless and until there is a clear violation of statute or constitutional provisions or there is arbitrariness, judicial review over the land acquisition matters cannot be entertained. But, in the instant case, this Court does not find any of the grounds mentioned above, to call for interference.

44. This Court in various decisions involving land acquisition matters have also held that interference in technical matters falling within the realm of experts does not give scope for judicial review. The following orders passed by the learned Single Judge as well as Division Benches of this Court supports the aforesaid view:

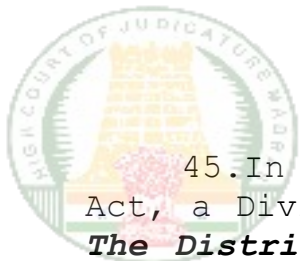
(i) WP (MD) Nos. 9161 to 9164 etc. of 2012 dated 04.04.2013

(ii) WP (MD) Nos. 7413 etc. of 2015:

(iii) WA No. 1462 and 1463 of 2013 dated 22.06.2015.

(iv) WP (MD) No. 8250 of 2015 dated: 09.02.2016.

(v) WP (MD) No. 8181 and 8182 of 2003 dt. 17.02.2017



45. In a similar issue though involving the National Highways Act, a Division Bench of this Court in the case of **B.Nambirajan vs. The District Collector dated 18.04.2018 in WP.No.2353 of 2018**, has held it is not for the petitioner to dictate as to which part of the road is first required, what is the type of work which has to be done at the first instance etc. These are all issues to be decided by the authorities and not for the Court in a writ petition under Article 226 of the Constitution of India, especially when there is no *malafide* exercise of power.

46. In the case on hand, as seen from the records placed before this Court, this Court does not find any *malafide* exercise of power by the respondents in acquiring the land belonging to the petitioner.

47. For the foregoing reasons, this Court does not find any merit in the writ petition. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

Sub Assistant Registrar

pam/MR

TO:

1. The Secretary to Government of Tamil Nadu
Department of Highways,
Fort St. George, Secretariat,
Chennai - 600 009.

2. The Project Director,
TamilNadu Road Development Project-II,
No.171, South Kesava Perumalpuram,
Greenways Road,
Raja Annamalaipuram,
Chennai - 600 028.

3. The District Collector,
Tirunelveli District,
Tirunelveli.

4. The Special District Revenue Officer,
(Land Acquisition),
TamilNadu Road Development Project-II,
Tiruchirappalli.



1 CC to M/s.S.S.THESIGAN, Advocate (SR-54549[F] dated 18/03/2019)

+1 CC to M/s.SPL GP (SR-54940[F] dated 19/03/2019)

+1 CC to M/s.SPL GP (SR-54931[F] dated 19/03/2019)

WEB COPY

order in
W.P. (MD) No. 7807 of 2015
and W.M.P. Nos. 1 and 2 of 2015

18.03.2019

DS/ /SAR- (29.03.2019) 12P 8C