



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.01.2019
PRONOUNCED ON : 08.04.2019

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD).No.22483 of 2018 and
W.M.P.(MD)Nos.20343, 20344 & 20633 of 2018

S.Munisamy

... Petitioner

Vs.

1. The Government of India,
Rep. by its Secretary,
Ministry of Road Transport and Highways,
Transport Bhavan, No.1, Parliament Street,
New Delhi.
2. The District Collector,
Madurai District, Madurai.
3. The Competent Authority
cum District Revenue Officer, Land Acquisition(NH),
Madurai District.
4. The National Highway Authority of India,
Represented by its Project Officer,
G5 & 6 Sector - 10, Dwarka,
New Delhi - 110 075.
5. The Project Officer,
National Highway Authority,
Surya Tower,
2nd Floor, K.K.Nagar, Madurai.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned notification in Na.Ka.No.A1/01/2018 dated 20.08.2018 on the file of the third respondent and published in Daily Thanthi dated 23.08.2018 under Section 3G(3) of the National Highways Act, 1956 and quash the same in so far as the petitioner is concerned.

For Petitioner	: Mr.G.Prabhu Rajadurai
For R-1	: Mr.S.Jeyasingh
For R-4 & R-5	: Mr.C.Arulvadivel @ Sekar
For R-2 & R-3	: Mr.M.Rajarajan,
	Government Advocate.

**ORDER**

The Writ petitioner is owning lands in Achampatti Village, Vadipatti Taluk and in Kulamangalam Bit 1, Madurai North Taluk. The petitioner's lands are sought to be acquired under the provisions of the National Highways Act for the purpose of building, maintenance, management and operation of NH 744A between Km0.000 and Km29.960, (Madurai Ring Road-Phase I) in Madurai District. The petitioner came to know about the proceedings only after the notification under Section 3G(3) of the Act was issued. The petitioner questions the proceedings primarily on the ground that the third respondent has no jurisdiction to function as the competent authority, since he is not a judicial officer not below the rank of the Subordinate Judge. The petitioner placed reliance on the decision of the Hon' ble Supreme Court reported in (2016) 9 SCC 791 (Lalji Bhai K.S. V. State of Gujarat). The other substantial contention urged by the petitioner's counsel is that the proposed acquisition affects the Nanja lands to a great extent. The alignment can be appropriately altered by avoiding acquisition of wet lands as the road can very well run through Government and dry lands.

2. As rightly pointed out by the learned Standing counsel, the competent authority has clearly stated that if the alignment is altered as demanded by the Writ petitioner, it would seriously disturb the overall alignment and that therefore it is not possible to accede to their request. The competent authority has emphasized the need for acquiring the petitioners' land for the purpose of implementing the project in question.

3. The contention that the petitioner's agricultural lands ought not to be acquired cannot also be accepted. This is because there is no such embargo on acquisition of agricultural lands. The decision reported in (2012) 1 SCC 792 (Ragbir Singh Sehrawat V. State of Haryana) cannot be applicable to the case on hand because the present acquisition proceedings are not under the provisions of the Land Acquisition Act, 1894. On the other hand, the impugned proceedings have been issued under the National Highways Act, 1956. The public purpose, in the present case is to form a Highway. Therefore, this case will have to be viewed differently.

4. The learned Standing counsel placed reliance on the decision of the Hon'ble Supreme Court reported in (2011) 12 SCC 69 (Union of India V. Kushala Shetty). Paragraph No.28 of the said decision reads as under:-

"28. Here, it will be apposite to mention that N.H.A.I. is a professionally managed statutory body having expertise in the field of development and maintenance of national highways. The projects involving construction of new highways and widening and development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of



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persons having vast knowledge and expertise in the field of highway development and maintenance. N.H.A.I. 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. In the case in hand, neither has any violation of mandate of the 1956 Act been established nor has the charge of malice in fact been proved. Therefore, the order under challenge cannot be sustained."

5. The contention that since the competent authority is not a judicial officer, in view of the decision of the Hon'ble Supreme Court reported in (2016) 9 SCC 791 (Lalji Bhai K.S. V. State of Gujarat), this Court will have to interfere cannot also be accepted.

6. As rightly pointed out by the learned Standing counsel appearing for N.H.A.I, the Hon'ble Supreme Court did not have the National Highways Act, 1956 in mind. The decision of the Hon'ble Supreme Court was rendered while construing the provisions of PMP (Petroleum and Minerals Pipelines (Acquisition of the right of use in land) Act, 1962. The Hon'ble Supreme Court held that the competent authority must be some one who was or who held a judicial office not lower in rank than that of a Subordinate Judge. But that was not the sole category. It was also mentioned that he must be some one having a legally trained mind. Admittedly, the District Revenue Officer is a legally trained person. This Court can take judicial notice of the fact that he is discharging various Quasi Judicial functions. He is the revisional authority in Patta cases. Thus, by discharging the statutory functions attached to the office of the District Revenue Office, any candidate holding that post acquires a legally trained mind.

7. As rightly pointed out by the learned Standing counsel in their counter affidavit, even though only the first notification issued under Section 3(A)(1) of the Act, the petitioner's land in Achampatti alone was mentioned, in the additional 3(A)(1) notification issued on 22.06.2018, the petitioner's lands in Kulamangalam Bit 1, were also included. In any event, without



lodging his objections in time, it is not open to the Writ petitioner to complain at this point of time, after Section 3G(3) notification was issued.

8. I am satisfied that the authorities have scrupulously adhered to the procedure laid down in the National Highways Act. I hold that the contentions raised by the petitioner are lacking in substance. I dismiss this Writ petition. No costs. Consequently, connected Miscellaneous petitions are closed.

sd/
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Ministry of Road Transport and Highways,
Transport Bhavan, No.1, Parliament Street,
New Delhi.
2. The District Collector, Madurai District, Madurai.
3. The Competent Authority
cum District Revenue Officer, Land Acquisition(NH),
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4. The National Highway Authority of India,
Represented by its Project Officer,
G5 & 6 Sector - 10, Dwarka, New Delhi - 110 075.
5. The Project Officer, National Highway Authority,
Surya Tower, 2nd Floor, K.K.Nagar, Madurai.

+1 CC to Mr.G.PRABHU RAJADURAI, Advocate (SR-59789[F] dated 09/04/2019)
+1 CC to Mr.C.ARUL VADIVEL @SEKAR, Advocate (SR-59713[F] dated 08/04/2019)
+1 CC to Mr.S.JEYASINGH, Advocate (SR-59830[F] dated 09/04/2019)
+1 CC to SPL GP (SR-59952[F] dated 09/04/2019)

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