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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.01.2019
PRONOUNCED ON: .04.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD).No.19333 of 2018 and
W.M.P.(MD)Nos.17166, 17167 & 17460 of 2018

S.Kasi ... Petitioner

Vs.

1. The Government of India,
Represented by its Secretary,
Ministry of Road Transport and Highways,
Transport Bhavan, No.1, Parliament Street,
New Delhi.

2. The District Collector,
Sivagangai District, Sivagangai.

3. The Competent Authority
cum Special District Revenue Officer,
Land Acquisitions (NH),
Sivagangai, Sivagangai District.

... Respondents

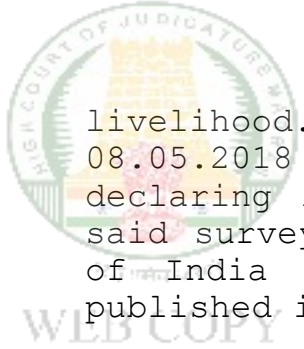
PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records relating to the impugned notification issued by the first respondent dated 08.05.2018 published in Gazette of India (Extraordinary) No.1665, SO.No.1852 (E) Part II Section 3(ii) and the consequential impugned order made by the third respondent in Na.K.aNo.66/2018Ne.A.Tha.Na.338, dated 16.07.2018 and quash the same as illegal.

For Petitioner : Mr.M.Ajmal Khan,
Senior Counsel,
for M/s.Ajmal Associates.
For R-1 : Mr.Arulvadivel @ Sekar
For R-2 & R-3 : Mr.M.Rajarajan,
Government Advocate.

ORDER

Heard the learned Senior counsel appearing for the Writ petitioner and the learned Standing counsel appearing for the first respondent and the learned Government Advocate appearing for respondents 2 and 3.

2. The Writ petitioner is an agriculturist. His family owns certain extent of land in Survey No.72, Katambur Village, Sivagangai District. The petitioner is dependent on the said land for his



livelihood. While so, the first respondent issued notification dated 08.05.2018 under Section 3(A)(1) of the National Highways Act 1956 declaring its intention to acquire 1.3063 hectares of land in the said survey number. The notification was published in the Gazette of India on 09.05.2018. The substance of the notification was published in Tamil daily newspaper on 16.05.2018.

3. The Writ petitioner offered his objections on 04.07.2018. But then, they were rejected by order dated 16.07.2018. The stand of the authority is that the objections were not received within 21 days and that is why the objections belatedly lodged cannot be considered. The notification under Section 3(A)(1) of the Act and the rejection order dated 16.07.2018 are under challenge in this Writ petition.

4. The learned Senior counsel contended that the impugned proceedings will have to be quashed in the light of the decision of the Hon'ble Supreme Court reported in (2005) 13 SCC 477 (Competent Authority V. Barangore Jute Factory) and the decision of the Hon'ble Division Bench reported in 2010 (6) CTC 337 (R.Natarajan V. The Union of India). He contended that the notification published by the authority is bereft of particulars. He also argued that the objections given by the petitioner ought to have been taken up for consideration. His further contention is that the fundamental right guaranteed under Article 21 of the Constitution of India is violated. This is because the petitioner is solely dependent on the lands that are proposed to be acquired and that if they are taken away, the petitioner would lose his only means of earning livelihood.

5. I regret that I am unable to agree with these contentions. The respondents have filed a detailed counter affidavit. With regard to contention that sufficient details have not been furnished, the learned Standing counsel rightly pointed out that as per Section 3 (A)(1) of the National Highways Act, the notification is required to give only a brief description of the land. This has been given. The land plan and other details in respect of the lands are very much available with the competent authority and open for inspection. Therefore, there is nothing vague about the notification. Similar contentions were earlier raised and they have been negated by the Hon'ble Supreme Court in the decision reported in (2011) 12 SCC 69 (Union of India V. Kushala Shetty). In the very same decision, it was further held that there must be adherence to the time schedule. The objections will have to be filed within 21 days. If it is not so done, the question of considering the objections will not arise. In the present case, admittedly the objections were not filed within 21 days. Therefore, the order dated 16.07.2018 rejecting the petitioner's objections cannot be faulted.

6. In (2011) 12 SCC 69 (Union of India V. Kushala Shetty), in paragraph No.26, it was held as under:



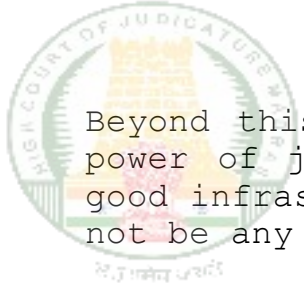
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"28. Here, it will be apposite to mention that N.H.A.I. is a professionally managed statutory body having expertise in the field of development and maintenance of national highways. The projects involving construction of new highways and widening and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

7. It is true that the petitioner's agricultural lands will be affected and this is certainly a matter for regret. But then, it appears to be inevitable. In such cases, the authority can only focus their attention on minimizing the extent of damage.

8. As rightly contended by the learned Standing counsel, there is no permanent embargo on the acquisition of the agricultural lands. The present alignment was prepared by technical experts. Therefore, it would not be appropriate for this Court to suggest to the authorities that the highway in question should have some other alignment. These are matters in which the Court should not overreach itself.

9. It is not in dispute that the petitioner's lands are acquired for effectuating a public purpose. Laying of national highways is very much in public interest. In such cases, this Court can only note two aspects. If there is no public purpose involved, then this Court would definitely intervene. In this case, admittedly, the acquisition is for a public purpose. The petitioner is entitled to compensation in terms of the new Act namely Central Act 30 of 2013. The financial package under the new Act is certainly beneficial.



Beyond this, this Court would not be justified in stretching its power of judicial review. No one can deny that unless there is a good infrastructure in the form of well connected roads, there will not be any economic development.

10. I find no merit in this Writ petition. This Writ petition stands dismissed. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Government of India,
Represented by its Secretary,
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New Delhi.
2. The District Collector,
Sivagangai District, Sivagangai.
3. The Competent Authority
cum Special District Revenue Officer,
Land Acquisitions(NH),
Sivagangai, Sivagangai District.

+1cc to Mr.C.Arulvadivel @ Sekar, Advocate, SR.No.59711
+1cc to Mr.Ajmal Associates, Advocate, SR.No.59862
+1cc to Special Government Pleader, SR.No.59883

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W.M.P.(MD)Nos.17166, 17167 & 17460 of 2018
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SP/29.04.2019/4P/7C