



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.01.2019
PRONOUNCED ON : 08.04.2019

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

**W.P. (MD)Nos.20986 to 20989 of 2018 and
W.M.P. (MD)Nos.18755 to 18762 & 20061 to 20064 of 2018**

P.Jayakanthan	... Petitioner
	in W.P.(MD)No.20986 of 2018
P.Jayakumar	... Petitioner
	in W.P.(MD)No.20987 of 2018
M.Kannan	... Petitioner
	in W.P.(MD)No.20988 of 2018
S.K.V.Chandra	... Petitioner
	in W.P.(MD)No.20989 of 2018

Vs.

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

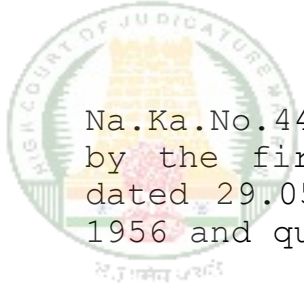
2.The District Collector,
Madurai District, Madurai.

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

4.The National Highway Authority of India,
G5 & 6 Sector-10, Dwarka,
New Delhi - 110 075,
Rep. by its Project Director.

... Respondents
in all petitions

COMMON PRAYER in W.P. (MD)Nos.20986 & 20987 of 2018: Writ Petitions are 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.4489/2018/B3 dated 22.02.2018 issued by the first respondent and published in Daily Thanthi Newspaper dated 23.02.2018 under Section 3(A)(1) of the National Highways Act, 1956 and the consequent order of the third respondent in Na.Ka.No.4489/2018/B3 dated 28.03.2018 and consequent notification in



Na.Ka.No.4489/2018/B3 dated 26.05.2018 and 26.05.2018 respectively by the first respondent and published in Daily Thanthi Newspaper dated 29.05.2018 under Section 3G(3) of the National Highways Act, 1956 and quash the same in so far as the petitioners are concerned.

PRAYER in W.P.(MD)No.20988 of 2018: 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.4489/2018/B3 dated 22.02.2018 issued by the first respondent and published in Daily Thanthi Newspaper dated 23.02.2018 under Section 3(A)(1) of the National Highways Act, 1956 and the consequent notification in Na.Ka.No.4489/2018/B3 dated 26.05.2018 by the first respondent and published in Daily Thanthi dated 29.05.2018 under Section 3G(3) of the National Highways Act, 1956 and quash the same in so far as the petitioner is concerned.

PRAYER in W.P.(MD)No.20989 of 2018: 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 in Na.Ka.No.4489/2018/B3 dated 22.02.2018 issued by the first respondent and published in Daily Thanthi Newspaper dated 23.02.2018 under Section 3(A)(1) of the National Highways Act, 1956 and the consequent order of the third respondent in Na.Ka.No.4489/2018/B3 dated 28.03.2018 and the consequent notification in Na.Ka.No.4489/2018/B3 dated 23.04.2018 by the first respondent and published in Daily Thanthi dated 26.04.2018 under Section 3G(3) of the National Highways Act, 1956 and quash the same in so far as the petitioner is concerned.

(in all W.Ps.)

For Petitioners : Mr.G.Prabhu Rajadurai

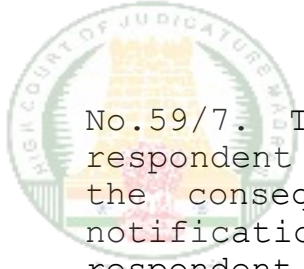
For R-1 : M/s.H.Lakshmi Shankar

For R-4 : Mr.C.Arulvadivel @ Sekar

For R-2 & R-3 : Mr.M.Rajarajan,
Government Advocate.

C O M M O N O R D E R

The first respondent declared its intention to acquire the lands for building, maintenance, management and operation of National Highways No.785 in the stretch of land from Madurai-Natham (Package II) from Chettikulam to Kadavur (Km7/300 to Km18/700). The petitioner in W.P.(MD)No.20986 of 2018 is owning lands in Survey Nos.41/1A, 46/6, 41/2A, 29/1B, 29/1A, 46/7B, 46/8, 41/3B, 41/2C, 41/2D, 29/2 and 41/3A measuring about 2 acres and 60 cents. The petitioner in W.P.(MD)No.20987 of 2018 is owning lands in Survey Nos.30/10, 30/13, 46/4, 46/5 and 46/3C measuring about 1 acre and 80 cents. The petitioner in W.P.(MD)No.20988 of 2018 is owning lands in Survey Nos.30/12 and 29/4 measuring about 2 acres and 35 cents. The petitioner in W.P.(MD)No.20989 of 2018 is owning lands in Survey



No.59/7. The notification dated 22.02.2018 issued by the first respondent under Section 3(A)(1) of the National Highways Act and the consequential order dated 28.03.2018 and the consequential notifications dated 23.04.2018 and 26.05.2018 issued by the first respondent under Section 3G(3) of the Act are under challenge in these Writ petitions.

2. The petitioners' counsel contended that the original alignment proposed by the respondent authorities was to pass through Kancharampettai Village in a straight line. For reasons best known, realignment was made in the project and as a result, wet agricultural lands are to be acquired. He also contended that the notification issued under Section 3(A)(1) of the Act is bereft of particulars. He assailed the notification primarily on the ground of vagueness. He also contended that the so called hearing was only an eyewash. A mechanical stereotyped order has been passed by the third respondent. It does not deal with the Writ petitioners' contentions at all. Yet another submission was that the authority who dealt with their contentions was not a judicial officer. Even though the awards have been passed, the petitioners have not received any compensation and that therefore, they will very much have *locus* to question the impugned proceedings.

3. I regret that I cannot accept the contentions of the learned counsel appearing for the petitioners. In the notification published under Section 3(A)(1) of the Act, survey numbers, extent, character of the land and name of the village have been mentioned. It has also been mentioned that the land plan and other details of the land covered under the notification were available and could be inspected by the interested persons at the office of the competent authority.

4. I also cannot agree with the contention that the objections of the Writ petitioners have not been properly considered. 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 petitioners, 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. The authority gave an opportunity to the Writ petitioners to participate in the enquiry. The enquiry was indeed conducted. Therefore, the contention of the petitioners' counsel that the enquiry was farce and empty formality will have to be rejected.

5. The contention that the petitioners' 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 petitioners' counsel placed reliance on the decision reported in (2012) 1 SCC 792 (Raghubir Singh Sehrawat V. State of Haryana). But the said decision cannot be applicable to the case on hand because the present acquisition proceedings are not under the provisions of



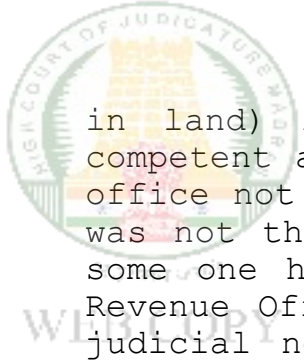
the Land Acquisition Act, 1894. On the other hand, the impugned proceedings have been issued under the National Highways Act, 1956. The public purpose, in the present case is to form a Highway. Therefore, this case will have to be viewed differently.

6. 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 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. 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.

8. 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.

9. 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 petitioners are lacking in substance. I dismiss these Writ petitions. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar(P & A)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Secretary,Government of India,
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 Acquisitions(NH), Madurai District.

4.The Project Director,
National Highway Authority of India,
G5 & 6 Sector-10, Dwarkar, New Delhi - 110,

+4 CC to M/s.G.PRABHU RAJADURAI, Advocate in SR-59790 to 59793
+1 CC to M/s.C.ARUL VADIVEL @SEKAR, Advocate in SR-59714
+3 CC to M/s.H.LAKSHMI SHANKAR, Advocate in SR-59756 to 59758
+1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No.59889

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