



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P. (MD) No.8211 of 2016

and

W.M.P. (MD) Nos.6673 & 6674 of 2016

and

W.P. (MD) No.18245 of 2014

and

M.P. (MD) No.3 of 2014 & 1 of 2015

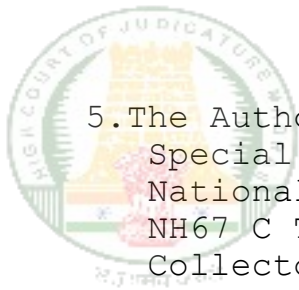
W.P. (MD) No.8211 of 2016:

Federation for Retrieval of Trichy
Palpannai - Thuvakkudi Service Road
By its Organizer M.Shanmugam
age 60
10th Cross East
Balaji Nagar, Trichy-19

... Petitioner

-vs-

- 1.The Chairman
National Highways Authority of India Ltd.,
New Delhi
- 2.The Project Director
National Highways Authority of India Ltd.,
Natarajapuram Colony
Thanjavur-4
- 3.Government of Tamil Nadu
Chennai
By its Principal Secretary
Highways and Small Ports Department
Chennai-9
- 4.The District Collector
Tiruchirappalli



5.The Authorized Officer cum
Special District Revenue Office
National Highways Authority
NH67 C Tanjore - Trichy
Collector Office, Trichy

6.M.Shenbagaraj

7.M.Tamilselvan

8.A.Kamalarani

9.M.Muthukaruppan

10.N.Shynabanu Beevi

11.Kanthillal P Patel

... Respondents

[R6 to R11 are impleaded as per
Court order dated 18.08.2016]

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records of the G.O.57, Highways and Small Ports (H.VI) department dated 20.05.2014 and quash the same as illegal and direct the 1, 2 and 5 respondents to initiate formation of the service road from Tiruchirappli Palpanni to Thuvakudi measuring length of 14.5 kms having width of RoW 60m within a time stipulated by this Court.

For Petitioner : Mr.S.Muthukrishnan

For Respondent No.1 : Mr.C.Nandagopal
Cental Government Standing Counsel

For Respondent No.2 : Dr.R.Rajagobal

For Respondent Nos.3 & 4 : Mr.K.Chellapandian
Additional Advocate General
assisted by Mr.A.K.Baskarapandian
Special Government Pleader

W.P. (MD) No.18245 of 2014:

1.A.Kamalarani

2.M.Mohamed Yusuff

3.M.Mohamed Sultan

4.E.Najeer Sherif

<https://hcservices.ecourts.gov.in/hcservices/>



5.Ahamed @ Amjatkhan

6.M.Ravindran

7.R.Venkat Nath

8.Sivagan K.Patil

9.P.Murugadoss

10.P.Varadarajan

11.C.Bakyarani

12.G.K.Arutchelvan

13.A.Sakunthala

14.Purushotham K.Patil

15.K.Logarajan

16.Pushpanathan

17.K.Samsath Begam

18.Mubarak Jan

19.P.Arivazhagan

20.R.Udayappan

21.A.Maheswari

22.M.Jamruthunisha

23.A.Thangavel

24.P.Natrayan

25.T.Periasamy

... Petitioners

-vs-

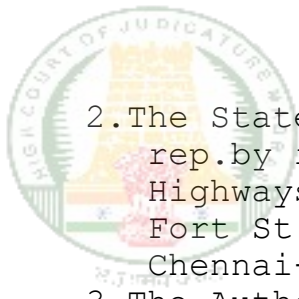
1.The Union of India

Rep.by its Secretary to Government

Ministry of Road Transport and Highways

Government of India

New Delhi



2.The State of Tamil Nadu
rep.by its Secretary to Government
Highways and Small Ports (HVI) Department
Fort St.George, Secretariat
Chennai-600 009

3.The Authorized Officer and
Special District Revenue Officer (Land Acquisition)
NH67 (Thanjavur-Tiruchirapalli)
District Collector Office Complex
District Collectorate, Tiruchirapalli-1

4.The Project Director
Project Implementation Unit
National Highways Authority of India
No.54, 1st Floor, Natarajapuram Colony
Medical College Road, Thanjavur

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records relating to the proceedings viz., the Declaration made by the 1st Respondent under Sec.3D(1) of the National Highways Act, published in the Extra Ordinary Govt. Gazette on 21.05.2014 and the Declaration made under Sec.3A(1) of the National Highways Act, published in the Extra Ordinary Government Gazette on 24.05.2013 and quash the same.

For Petitioners : Mr.R.Singaravelan, Senior Counsel
for Mr.K.S.Sankar Murali

For Respondent No.1 : Mr.C.Nandagopal
Cental Government Standing Counsel

For Respondent Nos.2 & 3 : Mr.K.Chellapandian
Additional Advocate General
assisted by Mr.A.K.Baskarapandian
Special Government Pleader

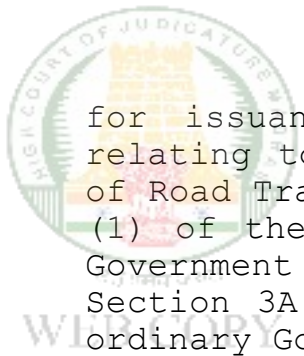
For Respondent No.4 : Dr.R.Rajagobal

C O M M O N O R D E R

[Order of the Court was made by T.S.SIVAGNANAM, J.]

W.P.(MD) Nos.8211 of 2016, 17268, 18244, 18245, 18247, 18248 & 18249 of 2014 have been clubbed together for the reason that they all concern the formation of service road from Thuvakudi to Palpannai on NH-67 in Trichy District.

2. W.P.(MD) Nos.17268, 18244, 18247, 18248 & 18249 of 2014 have filed by individual land owners and the prayer sought for in all these writ petitions are identical in the sense that they seek



for issuance of a writ of certiorari to call for the records relating to the proceedings viz., declaration made by the Ministry of Road Transport and Highways, Government of India under Section 3D (1) of the National Highways Act, published in the Extra Ordinary Government Gazette on 21.05.2014 and the declaration made under Section 3A(1) of the National Highways Act, published in the Extra ordinary Government Gazette on 24.05.2013 and to quash the same.

3. The grounds raised in these writ petitions are primarily stating that the proposed service road will be provided for a length of 2.48 km on the left hand side and 1.48 km on the right hand side where adequate width is available to form service roads within the existing right of way. Further, it is submitted that no survey has been conducted on the present and future road capacity requirements of traffic and transportation data of NH-67. Further, it is submitted that no technical feasibility survey has been undertaken by the competent authority. Further, it is submitted that the direction that the cost of land acquisition has to be borne by the Government of Tamil Nadu is erroneous, unjust and against the provisions of the National Highways Act. Further, it is submitted that if the already existing schemes on the Highways come into operation, the present proposal of providing service road will be without any use and it will only make a dent on the Central and State Government exchequer and hence, the present land acquisition proceedings under the Land Acquisition Act are not feasible and the same are arbitrary, unjust and unsustainable in law.

4. The stand taken in all the affidavits filed in support of the writ petitions are identical.

5. We have come across several writ petitions where the land acquisition proceedings initiated under the National Highways Act have been challenged by the land owners on the grounds of procedural errors, lack of adequate opportunity, decision taken with pre-decided mind etc. On going through the grounds raised in the present writ petitions, it is clear that none of these grounds have been raised by the land owners while challenging the land acquisition proceedings. On a perusal of the grounds raised, one gets impression that the present writ petitions are in the nature of public interest litigation as the petitioners are more concerned about the funds of the State Government and since there are other roads, there is no necessity to form service road etc.

6. At the time when the writ petition (W.P.(MD) No.18245 of 2014) was entertained on 13.11.2014, the learned Single Bench had directed to maintain *status quo* till 18.12.2014. It is not clear as to what was the status of the matter as on the relevant date. In any event, the order of *status quo* cannot be equated to that of the order of interim stay granted by the Court. This interim order, dated 13.11.2014, was extended till 06.01.2015 by order dated



18.12.2014. Subsequently, on 06.01.2015, the interim order was extended till 20.01.2015. Thereafter, when the matter came up for hearing on 20.01.2015, the learned Single Bench directed the writ petitions viz. W.P.(MD) Nos.18244, 18247 & 18249 of 2014 to be tagged along with W.P.(MD) Nos.18245 & 18248 of 2014. Accordingly, these writ petitions were tagged.

7. Thereafter, W.P.(MD) No.8211 of 2016 was filed by the Federation for Retrieval of Trichy Palpannai-Thuvakkudi Service Road, seeking for quashing the Government Order in G.O.No.57, Highways and Small Ports (H.VI) Department, dated 20.05.2014 and requesting that a service road should be formed having the total road length of 14.5 kilometers and width of 60 meters. This writ petition was heard by the Division Bench on 26.04.2016 and notice was ordered and the respondents were directed to file counter affidavit. Thereafter, the matter was adjourned twice. On 08.06.2016, when the said writ petition (W.P.(MD) No.8211 of 2016) was heard, the learned counsel appearing for the petitioners in W.P. (MD) No.17268 of 2014 etc., batch, appears to have been present in Court and given her no objection for the writ petitions filed on behalf of her clients to be tagged along with W.P.(MD) No.8211 of 2016. That is how, the writ petitions filed by the individual land owners numbering 5 have been tagged along with the other two writ petitions, which were filed as public interest litigation. Thereafter, the matter was heard by the Division Bench on different dates and on 30.06.2016, the Division Bench has passed the following order, which is a common order in all the writ petitions as well as miscellaneous petitions:

"In fact, this batch of cases has been ordered to be listed today at the request of Sri.AR.L.Sundaresan, learned Senior Counsel appearing for on behalf of the petitioners, but unfortunately, the learned Senior Counsel could not be present in the Court and hence, Sri.S.Raghunathan and Sri.M.Shenbagaraj, two of the petitioners appeared in person and requested us to adjourn the matters to 13.07.2016, so that, the learned Senior Counsel could be in a position to address us.

2. At the same time, the learned Standing Counsel appearing for the National Highways Department and the learned Additional Advocate General appearing for the State would submit that because of the order of the status quo, the work relating to formation of a National Highway has been stalled unnecessarily and this is likely to result in escalation of cost of the project.

3. Taking a balanced view of the matter, we consider that by vacating the order of status quo, the interests of the petitioners in the writ petitions are not going to be impeded or impaired greatly. On the other hand, their interests can



always be protected even at any later point of time including on the next date of hearing, i.e. 13.07.2016, when the learned Senior Counsel appears and makes his submissions. Whereas, by vacating the earlier order of status quo, the respondents will be able to, at least, take up the passing of award and take up preliminary works for formation of the road which itself takes considerable time for undertaking the study of the levels of the lands, culverts, etc. Therefore, we find that balance of convenience lies in vacating the earlier order of status quo granted by this Court and accordingly, the order of status quo already granted by this Court stands vacated. However, we will make it clear that no demolition work of any structure be carried out before 13.07.2016.

4. Call the matters on 13.07.2016."

8. In the above order, the Court had recorded that all the cases were directed to be listed before the Division Bench at the request of the learned Senior Counsel appearing for the petitioners in W.P.(MD) No.17268 of 2014 etc. But, unfortunately, the learned Senior Counsel was not present in Court and two of the petitioners, by name, Mr.S.Raghunathan and Mr.M.Shenbagaraj appeared in person and sought for adjournment. The learned Standing Counsel appearing for the National Highways Department and the learned Additional Advocate General appearing for the State opposed the said request and sought for vacating the order of status quo. The Court, after considering the entire matter, by the aforesaid order, vacated the order of status quo holding that balance of convenience lies in vacating the order of status quo. This order dated 30.06.2016 has attained finality and the individual writ petitioners have not challenged the same. Subsequently, the matter was heard by the Division Bench on various dates and invariably, the matter was adjourned for one reason or the other.

9. Thereafter, the matter was heard finally and the Division Bench reserved orders on 23.08.2016. However, on 11.08.2017, the matter was de part-heard and once again the matter has been listed for quite sometime and heard by the Division Bench. It is only in the year 2019, the Division Bench, which heard the matter had issued certain interim directions. The sum and substance of the directions is to ascertain as to what would be the area, which is required to be acquired for the purpose of forming the service road. One of the interim orders, which is relevant for the purpose of these writ petitions, is the order dated 28.03.2019, which reads as follows:

"The learned Additional Advocate General appearing for the State Government has produced before this Court a letter dated 20.03.2019, sent



by the Additional Chief Secretary to Government to the Divisional Engineer (H), Construction and Maintenance, Trichy, which indicates that the State Government has now formed an opinion that 45 meters width is sufficient to form the Service Road.

2. The learned counsel appearing for the National Highways has submitted before this Court that they require 60 meters width for the project and since the same has not been provided the project has not been launched. He would further submit that funds for acquisition has to be provided by the State Government for continuation of the project and they are willing to proceed with the project if the required fund is provided by the State Government. However, the State Government has made a request to reduce the width of the road to 45 meters, citing the reason that they do not have sufficient funds to provide 60 meters. Hence, it is for the National Highways to consider the request of the State Government.

3. We are now convinced that the State Government has already taken a decision that the width of the road can be 45 meters instead of 60 meters as it was proposed earlier. When the State Government has already taken a decision, it is for the National Highways to take a wise decision on this. Hence, we direct the State Government to address a letter or communication to the National Highways officially informing the decision of the State Government in this matter within one week and the National Highways shall take a policy decision within 10 days therefrom as regards the width of road. The decision taken by the State Government or Central Government is subject to the result of the Writ Petition.

Call on 22.04.2019 in the motion list."

10. In the said order, the Division Bench has recorded that it is clear that the State Government has taken a decision that the width of the road can be 45 meters instead of 60 meters as it was proposed earlier. Further, it was pointed out that when the State Government has already taken a decision, it is for the National Highways to take a wise decision on this and directed the State Government to address a letter or communication to the National Highways officially informing the decision of the State Government in this matter within one week and the National Highways shall take a policy decision within ten days therefrom as regards the width of the road.



11. Thereafter, subsequent directions had been issued on 06.06.2019, 01.07.2019 and 29.08.2019.

12. Pursuant to all the above observations and directions, it appears that meetings were convened and the decision taken has been conveyed to the learned Additional Advocate General by the Chief Engineer (H), Construction and Maintenance, Highways Department, vide letter dated 16.08.2019. The gist of the decision taken by the Chief Engineer, as conveyed to the learned Additional Advocate General, has been stated in Paragraph No.5 of the letter, dated 16.08.2019:

"5.It is respectfully submitted that I opine that the land acquisition as stated below is essential to ensure the Safety of the Road users:

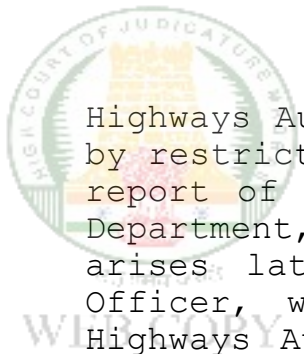
i) For normal four lane carriage way with service road on both sides and for junction improvements land should be acquired for 45 m Right of Way.

ii) For the stretches where Vehicular Under Passes and Foot Over Bridges to be constructed, land should be acquired for 60 m Right of Way and Five locations for a length of 210m for each location.

iii) For the stretches where Bus bays (Bus stops) to be constructed, land should be acquired for 50 m Right of Way at Ten locations on left side and Ten locations on right side for a length of 230 m for each bus bay.

iv) It is respectfully submitted that the same report has also been sent to the Government."

13. In the light of the above stand, we are of the considered view that the land acquisition proceedings should proceed at the first instance based on the proposal given by the Highways Department. We are conscious of the fact that the National Highways Authority of India has been taking a consistent stand that the minimum road width required is 60 meters. In fact, this is the strenuous submission of Dr.R.Rajagopal, learned standing counsel appearing for the National Highways Authority of India. However, what we are concerned in these cases, more particularly, in the cases pertaining to public interest litigation, is to ensure that service road is formed properly as it is reported that several fatal accidents are occurring in the concerned locality. As on date, there is no legal impediment for the land acquisition proceedings to be completed and award to be passed. Therefore, we dispose of W.P. (MD) Nos. 8211 of 2016 and 18245 of 2014 by directing the National



Highways Authority to proceed with the land acquisition process and by restricting the required extent to the extent as mentioned in the report of the Chief Engineer, Construction & Maintenance, Highways Department, Chennai, dated 16.08.2019, for the present and if need arises later, further steps can be taken. The Deputy Revenue Officer, who has been deputed as the Project Officer, National Highways Authority of India, shall take expeditious steps to pass award and it is well open to the Authority to restrict the extent to be acquired as indicated in the proposal of the Chief Engineer, Construction & Maintenance, Highways Department, Chennai.

14. Considering the fact that the matter has unnecessarily been dragged on from the year 2014, which in our considered opinion, without any valid cause, it is a high time for the National Highways Authority to take expeditious steps to complete the above exercise and we hope and trust that the service road will be formed within a period of six months from today (i.e.15.10.2019).

15. In the light of the above, **W.P.(MD) Nos.8211 of 2016 and 18245 of 2014 are delinked from W.P.(MD) Nos.17268, 18244, 18247, 18248 & 18249 of 2014.**

16. Accordingly, **W.P.(MD) Nos.8211 of 2016 and 18245 of 2014 stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.**

17. The writ petitions in W.P.(MD) Nos.17268, 18244, 18247, 18248 & 18249 of 2014 are directed to be listed in the usual course.

Sd/-

Assistant Registrar (CS III)

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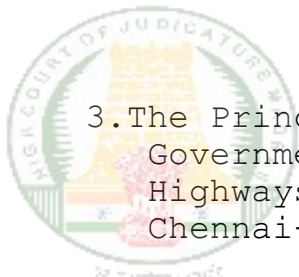
Sub Assistant Registrar(CS)

krk

To:

1.The Chairman,
National Highways Authority of India Ltd.,
New Delhi.

2.The Secretary to Government,
Ministry of Road Transport and Highways,
Government of India,
New Delhi.



3.The Principal Secretary to
Government of Tamil Nadu,
Highways and Small Ports Department,
Chennai-9.

4.The District Collector,
Tiruchirappalli.

5.The Authorized Officer and
Special District Revenue Officer (Land Acquisition),
NH67 (Thanjavur-Tiruchirapalli),
District Collector Office Complex,
District Collectorate,
Tiruchirapalli-1.

6.The Project Director
Project Implementation Unit
National Highways Authority of India
No.54, 1st Floor, Natarajapuram Colony
Medical College Road, Thanjavur

+2 CC to M/s.DR.R.RAJAGOBAL, Advocate (SR-92008[F] dated 15/10/2019)

+1 CC to M/s.AL.GANTHIMATHI, Advocate (SR-92052[F] dated 16/10/2019)

+2 CC to M/s.K.S.SANKAR MURALI, Advocate (SR-92066[F] dated 16/10/2019)

+1 CC to M/s.S.MUTHUKRISHNAN, Advocate (SR-92122[F] dated 16/10/2019)

+1 CC to M/s.SPL GP (SR-92147[F] dated 16/10/2019)

+1 CC to M/s.C.NANDAGOPAL, Advocate (SR-92621[F] dated 17/10/2019)
krk

W.P. (MD) No.8211 of 2016

and

W.M.P. (MD) Nos.6673 & 6674 of 2016

and

W.P. (MD) No.18245 of 2014

and

M.P. (MD) No.3 of 2014 & 1 of 2015

15.10.2019

KK/SAR/22.10.2019/11P-15C/