



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.06.2019

(Reserved on 01.11.2018)

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CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.7802 to 7807 of 2013

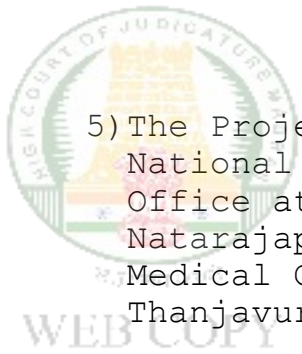
and

M.P(MD)Nos.1 and 2 of 2013 and 1 of 2015(18 M.Ps)

S.Dhakshinamoorthy ... Petitioner in WP(MD)No. 7802/ 2013
Maruthiah Samban ... Petitioner in WP(MD)No. 7803/ 2013
C.Rajini ... Petitioner in WP(MD)No. 7804/ 2013
N.Manikandan ... Petitioner in WP(MD)No. 7805/ 2013
T.Shanmugam ... Petitioner in WP(MD)No. 7806/ 2013
Dharmalingam ... Petitioner in WP(MD)No. 7807/ 2013

- Vs. -

- 1)The Union of India,
Represented by its Director,
Ministry of Road Transport and Highways,
(Department of Road Transport and Highways),
New Delhi.
- 2)The Competent Authority and
Special District Revenue Officer, (Land Acquisition)
National Highway No.67 and 45C,
Vikkiravandi-Kumbakonam-Thanjavur Section,
No.12, Tamilzh Nagar, Ilamal, Thiruvarur.
- 3)The District Collector,
Thanjavur District, Thanjavur.
- 4)The Special Tahsildar, (LA)
Unit-II, National Highway No.45C,
83, Srinagar Colony,
Dr.Virudagiri Children's Hospital,
1 Floor, Kumbakonam.



5) The Project Director,
National Highway Authority of India,
Office at Project Director,
Natarajapuram,
Medical College Road,
Thanjavur.

... Respondents in all Writ Petitions

Prayer in WP(MD)No. 7802/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned notification issued by the 2nd respondent in Na.Ka.No. 1046/2011 dated 05.02.2013 and consequential order passed by the 2nd respondent in Na.Ka.1046/2011/Aa/The.Ne/Tiruvarur dated 16.04.2013 and quash the same in respect of the petitioner's natham land and house property comprised in S.No. 108/8A2 at Sundaraperumal Koil Village No. 50, Thiruvalanchuzhi Revenue Village, Kumbakonam Taluk, Thanjavur District.

Prayer in WP(MD)No. 7803/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned notification issued by the 2nd respondent in Na.Ka.No. 1048/2011 dated 05.02.2013 and consequential order passed by the 2nd respondent in Na.Ka.1048/2011/Aa/The.Ne/Tiruvarur dated 16.04.2013 and quash the same in respect of the petitioner's punja land comprised in S.No. 6/3, 6/5 at Pudupadaiyur, Patteswaram Revenue Village, Kumbakonam Taluk, Thanjavur District.

Prayer in WP(MD)No. 7804/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned notification issued by the 2nd respondent in Na.Ka.No. 1046/2011 dated 05.02.2013 and consequential order passed by the 2nd respondent in Na.Ka.1046/2011/Aa/The.Ne/Tiruvarur dated 16.04.2013 and quash the same in respect of the petitioner's natham land and house property comprised in S.No. 108/8A2 at Sundaraperumal Kovil Village, No.50, Thiruvalanchuzhi Revenue Village, Kumbakonam Taluk, Thanjavur District.

Prayer in WP(MD)No. 7805/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned notification issued by the 2nd respondent in Na.Ka.No. 1046/2011 dated 05.02.2013 and consequential order passed by the 2nd respondent in Na.Ka.1046/2011/Aa/The.Ne/Tiruvarur dated 16.04.2013 and quash the same in respect of the petitioner's natham land and



house property bearing Door No.5/53, comprised in S.No. 108/8A1, 108/6, 108/7, at Sundaraperumal Kovil Village, No.50, Thiruvanchuzhi Revenue Village, Kumbakonam Taluk, Thanjavur District.

Prayer in WP(MD)No. 7806/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned notification issued by the 2nd respondent in Na.Ka.No. 1046/2011 dated 05.02.2013 and consequential order passed by the 2nd respondent in Na.Ka.1046/2011/Aa/The.Ne/Tiruvarur dated 16.04.2013 and quash the same in respect of the petitioner's natham land and house property comprised in S.No. 108/8A3, at Sundaraperumal Koil Village, No.50, Thiruvanchuzhi Revenue Village, Kumbakonam Taluk, Thanjavur District.

Prayer in WP(MD)No. 7807/ 2013 :

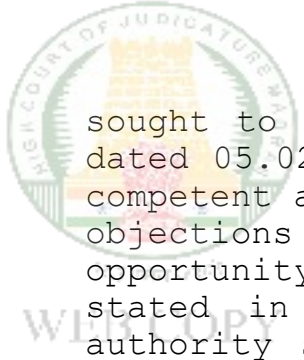
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned notification issued by the 2nd respondent in Na.Ka.No. 1048/2011 dated 05.02.2013 and consequential order passed by the 2nd respondent in Na.Ka.1048/2011/Aa/The.Ne/Tiruvarur dated 16.04.2013 and quash the same in respect of the petitioner's punja land comprised in S.No. 4/4 at Pudupadaiyur, Patteswaram Revenue Village, Kumbakonam Taluk, Thanjavur District.

For Petitioner	: Mr.A.Rahul
For R1	: Mrs.L.Victoria Gowri Senior Panel Counsel for Central Government
For R2 to R4	: Mr.A.Thiyagarajan
For R5	: Dr.R.Rajagopal (in all Cases)

COMMON ORDER

Aggrieved by the notification issued under Section 3(A)(1) of the National Highways Act (Act No.48 of 195) (hereinafter referred to as 'the Act') to acquire lands of the petitioners for the purpose of laying National Highway No.45C and the consequential orders rejecting the objections of the petitioners against the above said notification, these writ petitions have been filed.

2.Learned counsel for the petitioners would submit that the 2nd respondent issued the impugned notification dated 05.02.2013 under Section 3(A)(1) of the National Highways Act, expressing the intention of the Government to acquire the lands of the petitioners comprised in various survey numbers for public purpose of laying National Highway No.45C, Vikkiravandi-Kumbakonam-Tanjore Section between Km 100/000 and 165/000. The persons interested in the lands



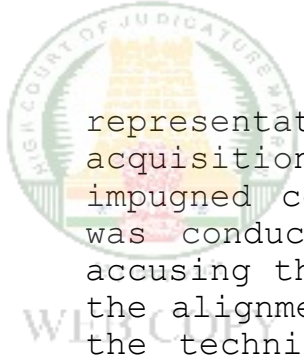
sought to be acquired were instructed by the impugned notification dated 05.02.2013 to file their objections within 21 days before the competent authority, namely, 2nd respondent, with an information that objections would be considered and objector would be given opportunity of hearing in person or through counsel. It was also stated in the notification that the decision of the competent authority shall be final as provided under Section 3(C)(2) of the National Highways Act.

3.It is further submitted that the petitioners had submitted detailed representations raising several objections against the proposed acquisition of land for laying national highway, contending that acquisition notification dated 05.02.2013 is bereft of material particulars, inasmuch as instead of mentioning the specific names of owners of the land proposed to be acquired, it was merely stated as ''private'' and mere mentioning of land survey numbers is not sufficient as in the village areas, lands would have been leased out to third parties. Further, in the representations, it was stated that already there was an objection raised regarding the acquisition of land and the present acquisition is not in terms of the plan which was issued earlier and road plan was altered only in order to favor some private individuals who are influential with the Governmental authorities and road plan was re-aligned in such a manner to defeat the interest of agriculturists and the road would cut through several houses in colony area.

4.It is further contended that on 29.07.2012 itself, there was a representation on behalf of the residents of Bharathiyar Nagar of Thiruvazhanchuli Revenue Village, explaining as to why acquisition shall not be done acquiring the lands of the petitioners and others living in the said village and that a survey was conducted 1000 feet away at the Eastern side of the street in which the petitioners are residing and survey sticks were also erected. Whereas, subsequently, instead making use of the poramboke lands, the lands of the petitioners and others were sought to be acquired, despite the fact that the petitioners are living in said houses for about 75 years and many of the residents are agricultural coolies.

5.It was further stated that the sketch of the road was not served upon the affected parties and the notification dated 05.02.2013 simply states that the sketch and other informations were available at the office of the 2nd respondent at Thiruvarur, which was grossly insufficient and the individual plan ought to have been served upon the parties affected by the land acquisition. Moreover, the lands were so acquired to lay the road, are not in the straight line in order to favor some private individuals. Therefore, the petitioners would pray to drop the land acquisition proceedings.

6.Learned counsel for the petitioners would further contend that the respondents issued notice dated 13.03.2013, directing the petitioners to appear for personal hearing on 02.04.2013 and accordingly, the petitioners appeared before him and made another



representation with a request not to proceed with the land acquisition proceedings. However, the 2nd respondent passed the impugned consequential order simply stating that when the enquiry was conducted on 02.04.2013, the petitioners left the office by accusing the officials instead of giving the statement. Furthermore, the alignment of National Highways 45C was prepared on the basis of the technical and economic basis and accordingly, the lands were acquired and hence, the alignment of the lands cannot be altered. Therefore, the objections of the petitioners were rejected. It is further stated that the impugned notification dated 05.02.2013 and the consequential impugned order dated 16.04.2013 passed by the 2nd respondent are contrary to the provisions of Section 3A & 3C of the National Highways Act 1956 and hence the same are liable to be set aside as null and void.

7. It is further stated that under Section 3A (2) of the NH Act 1956, it is provided that every notification under sub - Section (1) shall give a brief description of the land. The object behind the Section is to enable the objector to know that his land is sought to be acquired for laying of National Highway. The terminology used in the sub section "Brief Description" essentially means sufficient material particulars so as to enable the owner of the land and others who have interest over the land to make objections against the land acquisition proceedings. Therefore, it is mandatory to provide the name of the owner of the land in the notification issued under Section 3A(1) of the NH Act, otherwise, the opportunity to make effective objections would be denied to the persons interested in the lands. Whereas, the impugned notification dated 05.02.2013 simply states "Private" under the heading "'Nature of the land'". Therefore, the impugned notification dated 05.02.2013 has not met the basic mandatory requirement under Section 3A (2) of the NH Act 1956 and hence the impugned notification dated 05.02.2013 is liable to be set aside on this ground itself. According to the petitioners, the impugned orders are non speaking orders and suffers from non application of mind and no reasons have been assigned and the objections of the petitioners were not considered.

8. It is submitted that under Section 3(C)(3) of the Act 1956, it is provided that any order made by the competent authority under Sub-Section (2) shall be final. Therefore, the petitioners have filed these writ petitions. Moreover, in an identical case, this Court was pleased to set aside an order similar to the consequential impugned order passed by the 2nd respondent dated 16.04.2013 in a judgment reported in 2010 (6) CTC 337 on the ground that the competent authority disallowed the objection not on the ground that there was no substance in the objection, rather, on the ground that the technical expert/consultant has already prepared detailed project report and the land acquisition work was already started and the project was under progress. In the present cases, there was nothing in the impugned orders to show that the objections raised by the petitioners were even considered or dealt with by the authority and no reason was assigned for rejection of objections and hence the

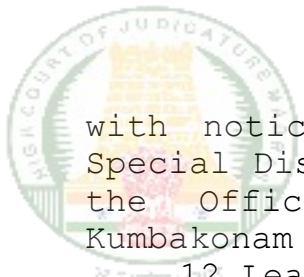


order was passed with non-application of mind by the authority under Section 3(2) of the Act.

9. It is further submitted that the contention of the learned counsel for the National Highways Authority of India that already declaration under Section 3(D) of the Act, has been issued and hence nothing survives in these writ petitions for adjudication, is devoid of merit for the simple reason that this Court has already passed an interim order of the status quo in respect of possession of the land acquired and it has been extended until further orders and therefore, the respondents cannot proceed with issuance of the declaration U/s.3(D) of the Act which is a violation of the interim order passed by this Court and it will not preclude the powers of this Court to adjudicate the lis involved in the writ petition on merits.

10. It is further submitted that the Hon'ble Supreme Court had an occasion to deal with the similar issue in a judgment reported in 2005 (13) SCC 447, wherein, it has been held that the Act requires the notification to be issued in a particular manner with brief particulars of the land being acquired and the notification has failed to meet the requirement and the same has no legs to stand. According to the petitioners, the same principle applies to the present case and the impugned orders be set aside accordingly. Thus, the petitioners would pray for allowing the writ petitions.

11. The respondents 2, 3 and 4 filed counter affidavit contending that the Central Government has entrusted National Highways No.45C (the Highways starting from its junction with NH.67 near Thanjavur connecting Kumbakonam, Sethiyathope, Neyveli Township, Vadalur, Panruti and terminating at its junction with NH.45C near Vikiravandi) to the National Highways Authority of India vide Government of India Gazette S.O.No.1726(E) dated 06.12.2005. The Government of India in the Ministry of Road Transport and Highways in Gazette No.976 S.O. 1180(E) dated 24-05-2012, has authorized the Special District Revenue Officer (Land Acquisition), National Highways, Thiruvavur, as the Competent Authority to perform the functions on the powers conferred by clause (a) of Section 3 of the Act, for acquisition of land in respective of NH.45C in the State of Tamil Nadu on the stretch from Km 100/00 to Km 165/00. Accordingly, lands have been acquired in 12 villages in Thiruvidaimarudur Taluk, 18 Villages in Kumbakonam Taluk, 16 Villages in Papanasam Taluk and 7 Villages in Thanjavur Taluk, for the formation of four laning of Vikravandi-Kumbakonam-Thanjavur Section of NH.45C for a length of 65 Kms in Thanjavur District. Accordingly, for acquiring the lands of the petitioners, notification under Section 3A(1) of NH Act 48 of 1956 was published in the Gazette of India and the substance of the notification was also published in two local Newspapers calling for objections, if any, within 21 days from the date of publication. The petitioners filed an objection petitions which were received by the Special District Revenue Officer and thereafter, the petitioners were served



with notices to appear for the enquiry to be conducted by the Special District Revenue Officer(LA)National Highways, Thiruvarur in the Office of the Special Tahsildar(LA) National Highways, Kumbakonam on 02-04-2013.

12.Learned counsel for the respondents 2, 3 and 4 further contended that on the date of enquiry, the petitioners along with 10 other persons entered into the enquiry hall and handed over an objection petition and had not answered for any questions raised by the Competent Authority and Special District Revenue Officer(LA), National Highways, Thiruvarur, who has conducted enquiry under Section 3C(2) of the Act. They also not requested for production of any Survey maps, Sub division Records or any other records pertaining to the acquisition of lands. After due enquiry, orders have been passed, by rejecting the request of the petitioners not to acquire the land vide the Special District Revenue Officer L.A.) National Highways, Thiruvarur, proceedings Re. 1046/2011/A/ dated 16-4-2013.

13.In pursuant to the orders of 2nd respondent dated 16-04-2013, the final notification under Sec.3(D) of NH Act 48 of 1956 for Thiruvalanzuli village of Kumbakonam Taluk, was also published in the Gazette of India No. 1597 SO 2093(E) dated 09.07-2013 by declaring that on publication of this notification in the Official Gazette, lands in the schedule shall vest absolutely with the Central Government free from all encumbrances. As such, the lands belonging to the petitioners have been acquired and vested with Central Government free from all encumbrances with effect from 09.07.2013 i.e. from the date of publication in the Gazette of India.

14.The counsel for the respondents 2, 3 and 4 would further contend that;

a) The Notification issued in Rc.1046/2011 dated 05.02.2013 calling for objections were issued only as per the provision made under Section 3(c)(1) of the Act and it is not issued arbitrarily.

b) The Notification has also been issued as per the provisions of the Act and it is in order and maintainable.

c) The Notification issued is in order as per the powers conferred by subsection (1) of Section 3A of the Act. In the above Notification, both in the Gazette of India and in the local dailies, brief description of the property required to be acquired such as name of District, Taluk, village, Survey Numbers, Type of Land, Nature of land, classification of land including extent required are depicted as contemplated under Sec.3A of the Act and therefore, the respondents 2 to 4 denied the allegation that the mode of publication was not proper.

d) The contention of the petitioners that without road plan, they were deprived of their right to give effective representations and hence the impugned notification is bad in law, is not correct. The Newspaper publication is 'in accordance with law and it was mentioned that all the plan and connected records covered in the Notification are available in the Office of the Special District

Revenue Officer(LA) National Highways, Thiruvarur, for perusal by the land owner/interested persons.

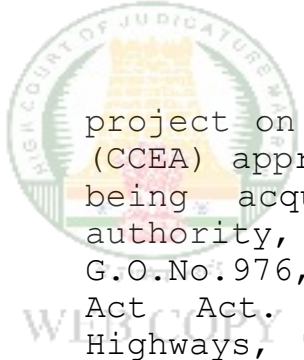
e) The existing NH.45C is running through dense built up and commercial area of villages such as Sundaraperumalkoil, Thiruvallanzuli, Swamimalai, Papanasam, Rajagiri, Ayyampettai Vayalur which spans from Km128/740 to Km 163/640. Considering the above reasons, the Consultant in their Detailed Project Report, has proposed an entire by pass from Km 128/740 to Km 163/640 so as to avoid demolition of more number of buildings/structures etc. The alignment proposed is with geometry which was formulated by the expert committee and hence the change of alignment could not be considered. The land acquired is classified as 'Private Dry' which is only agricultural land and not classified as Natham as stated by the petitioners.

f) The petitioners were served with notices to appear for enquiry in addition to publications made in local dailies

15.It is further contended that it has been mentioned in the Notification itself that interested persons in the above said lands can inspect the plan of the area covered in the Notification in the Office of the Special District Revenue Officer(LA), National Highways, Thiruvarur, and there is no provision to enclose the road plan along with the said notices. The Notification issued is as per the provisions of the Act. The petitioners cannot indulge in any malafides on the part of the statutory functionaries entrusted with the task of acquisition of the land. The statutory functions have been discharged strictly in accordance with the provisions of the Act and therefore, prayed for dismissal of the writ petitions.

16.The 5th respondent/Project Director, National Highway Authority of India, Natarajapuram North Colony Medical College Road, Thanjavur, has filed a counter affidavit contending that the National Highways Authority of India was constituted by the Central Act No.68 of 1988. It has the mandate to implement National Highways Development Project to widen the National Highways into two lanes / four lanes with a target to complete the project by 2015.

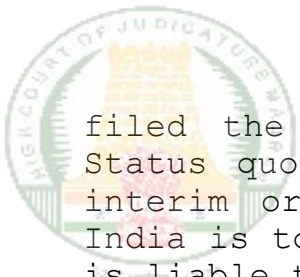
17.Learned counsel for the 5th respondent would contend that NH-45C has been recently upgraded as one of the National Highways. National Highways Authority of India is entrusted with the task of maintenance of this road by Gazette Notification S.O.No.1726(E) dated 06.12.2005. Ministry of Road Transport and Highways (MORTH) have declared that this National Highway is proposed to be improved to Two lane with Paved Shoulders by including the same in NHDP Phase IV. The Scope of doing feasibility study was entrusted to M/s.Louis Berger & Co in Joint Venture with Vax Consultants on 21.05.2009. Considering the traffic which warrants four lane of the above road from Km 0.000 to 93.5000, the DPR consultant has proposed for improving the section from Km 0.000 to 93.500 by four laning and two laning with paved shoulders from Km 93/500 to Km165/000. Public and Private Partnership Appraisal Committee (PPPAC) has approved this



project on 13.12.2011 and the Cabinet Committee on Economic Affairs (CCEA) approved the same on 01.03.2012. The land for the project is being acquired under the Act. The appointment of competent authority, the 2nd respondent for land acquisition was made vide G.O.No.976, S.O.1180(E) dated 24.05.2012 under Section 3(a) of the Act. The Special District Revenue Officer(LA), National Highways, Tiruvarur, was appointed as the Competent Authority for acquisition of lands required for the implementation of the above project in the stretch from Km 100/00 to Km 165/000 as per the above referred Government of India notification. Accordingly, the lands have been acquired in 12 villages in Thiruvidadaimarudur Taluk, 18 villages in Kumbakonam Taluk, 16 villages in Papanasam Taluk and 7 villages in Thanjavur Taluk for the formation of Two laning with paved shoulders of of NH-45C for a length of 65Kms in Thanjavur District.

18.It is further contended that the Central Government has declared its intention to acquire an extent of 93680 Sq.Mts of land in Thiruvalanzuli Village of Kumbakonam Taluk in Thanjavur District Vide Government of India Gazette No.65, S.O.69(E) dated: 07.01.2013 in exercise of its powers as conferred under sub section(1) of section 3(A) of the Act 48 of 1956. The petitioners' lands were also included in the above extent of area. The substance of the Notification was also published in two local Newspapers in ''The New Indian Express (English)'' and ''Thinathanthi (Tamil)'' both dated 15.02.2013 for wide publicity under sub section (1) of section of 3 (C) of the Act, for preferring objections before the Competent Authority within 21 days from the date of said publication. The petitioners submitted objections and they were called for an enquiry and thereafter, the 2nd respondent passed orders by disallowing all the objections made by the petitioners under Sec 3C(2) of the Act. In pursuant to the orders of 2nd respondent dated 16.04.2013, the final notification under Section 3(D) of NH Act 48 of 1956 for Thiruvalanzuli village of Kumbakonam Taluk was also published in the Gazette of India No.1597 SO 2093(E), dated 09.07.2013, by declaring that on publication of this notification in the Official Gazette, lands specified in the schedule shall vest absolutely with the Central Government free from all encumbrances, as such, the lands of the petitioners have been acquired and vested with Central Government with effect from 09.07.2013 ie., from the date of publication in the Gazette of India.

19.The substance of the above Notification was also published in two local Newspapers for wide publicity under sub section 3D (1) and 3 G(3) of section of the Act entails preferring 3G enquiry conducted from 03.01.2014 to 06.01.2014, 08.01.2014, and 10.01.2014 before the Competent Authority in the specified place of the notice at 10.00 am to 5.45 pm from the date of said publication. The 2nd respondent also provided opportunity to the petitioners to produce the records and relevant documents on that day for proof of their bona fide of the lands, but the petitioners neither availed the opportunity nor produced documents. Only thereafter, they have



filed the present writ petitions and obtained interim order of Status quo. According to the 5th respondent, because of the said interim order, the major four lane project of the Government of India is totally affected and therefore the said order of status quo is liable to be vacated.

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20. Learned counsel for the 5th respondent further contended that the petitioners without challenging the 2nd respondent's Notification Vide Government of India Gazette No.65, S.O.69(E) dated: 07.01.2013 and the subsequent disallowed order of the 2nd respondent under Section 3C(2) of the NH Act in time, the petitioners have only challenged the 2nd respondent's 3(D) Gazette Publication No.1597 SO 2093(E) dated 09.07.2013 which is not maintainable. Since, the lands have been vested with the Central Government free from all encumbrances under sub section (i) of 3D of NH Act 1956, it shall not be called in question in any court or by any other authority.

21. It is further submitted that the Gazette Notification issued and the consequent paper publications are in tune with the provisions of the Act and therefore, the request of the petitioners to drop the entire acquisition in respect of their lands cannot be accepted. After that the award is passed by the 2nd respondent competent authority, all the land owners received the award amount and handed over the lands to NHAI, except the petitioners and now the formation of road is almost over except the petitioners' lands and because of the pendency of these writ petitions, the 2nd respondent is unable to disburse the award amount to the petitioners and due to the interim order of status quo, the major project of the Central Government is stalled and therefore, the interim order is to be vacated and the writ petitions be dismissed.

22. Heard the counsels for both sides and perused the records. The petitioners seek to quash the notification issued in NA KA No 1046 of 2011 dated 05.02.2013 and also the consequential rejection order rejecting the objections of the petitioners. The notification dated 05.02.2013 was issued under Sec 3 (A) (1) of the Act, seeking the land owners to file objections within 21 days before the competent authority with an information that the objections would be considered and objector shall be given opportunity of hearing in person or through counsel. The impugned order dated 16.04.2013 came to be passed rejecting the objections of the petitioner stating that the petitioner left the office midway during the personal hearing on 02.04.2013 after accusing the officers and that the road alignment cannot be altered as the alignment was prepared on the basis of technical and economic evaluation.

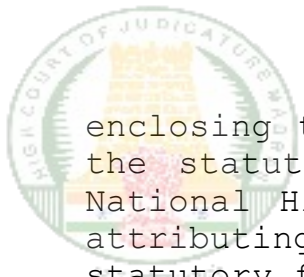
23. The petitioners are aggrieved by the above notification dated 05.02.2016 and the consequential order dated 16.04.2013 on multiple counts. They claim that their lands are natham land. It is their grievance that many objections filed by them are not considered. They allege that the notification is bereft of material



particulars in as much as the name of the land owners is not published in the notification. It was pointed out that objections were already raised in respect of the petitioners' property regarding the land acquisition some time back before the issuance of the impugned notification and that the present acquisition is not in terms of the plan which was issued earlier. The petitioner alleged that the present road plan was altered only in order to favour some influential private individuals and that the revised road plan would cut through several houses in the colony area besides agricultural lands. It was argued that the representation dated 29.07.2012 filed on behalf of the residents of the Bharathiyar Nagar of Thiruvazhanchuli Village explaining why the acquisition should not be done acquiring the lands of the petitioner and others living in the said village and thereafter survey was conducted 1000 metres away from the eastern side of the street where the petitioner reside and survey sticks were also erected. But, subsequently, the petitioners' lands and houses are sought to be acquired. It was alleged that the sketch of the road was not served on the parties affected by the land acquisition. It was further alleged that the road is not on a straight line, only to favour the influential private individuals. It was mentioned that the written representation submitted at the time of personal hearing was also ignored. Therefore, they argued that the impugned orders are non speaking and suffers from non application of mind with no reasons assigned for arriving at the decision and that the objections raised by the petitioner was not considered. Therefore, they claim that the impugned orders are contrary to the provisions of Section 3A & 3C of the Act. The petitioners took strong exception to the argument of the counsel for the National Highway Authority that nothing survives in the petition as the declaration under Section 3 D is already notified. They pointed out that the interim order of status quo passed by this Court bars the respondents to proceed with the issuance of declaration under Sec 3 D of National Highways Act, 1956.

24. In support of their plea that the impugned notification is bereft of material particulars, they had relied on the decision of the Hon'ble Supreme Court reported in 2005 (13) SCC 447 wherein it was held that the act requires the notification to be issued in a particular manner.

25. The respondents on the other hand would submit that the proposed land is only agricultural land and not natham land as stated by the petitioners. They maintained that the details published in the notification was issued in full compliance of the Act. They pointed out that the acquisition is done as per the detailed project report of the consultant and that the alignment was formulated by the expert committee in their technical and economic wisdom. They also pointed out the fact of mentioning in the notification, the availability of the plan of the area covered in the notification for inspection at the office of the Special District Revenue Officer(LA), and that there is no provision for



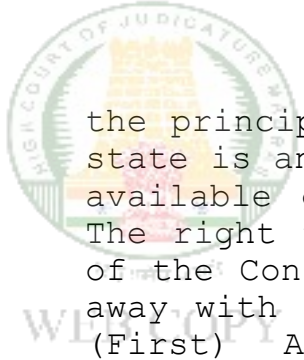
enclosing the road plan along with the notices. It was argued that the statutory functions are strictly done in accordance with the National High Way Act, 1956 and the petitioners cannot indulge in attributing malafides to the officers for discharging their statutory functions.

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26.The 5th respondent Project Director of the NHAI had narrated the preparation and approval of the projects in detail. They argued that in view of the declaration issued under Notification published in Gazzete of India No 1597 SO 2093 (E) dated 09.07.2013, the lands acquired under the project including that of the petitioners are vested with the Central Government. Thereafter enquiries were conducted during the period 03.01.2014 to 06.01.2014. 08.01.2014 and 10.01.2014 before the competent authority between 10.AM and 5.45 PM for the land owners to prove their bona fide of ownership and the petitioners chose not to attend the same. It was submitted that only after the above proceedings were completed, the petitioners filed the Writ Petitions and obtained interim order of Status Quo. They submitted that the major four lane project of Government of India is affected because of the interim order and the same has to be vacated. It was argued that it is not open for the petitioners to not challenge the notification dated 07.01.2013 and the subsequent order dated 16.04.2013 within time and later challenge the notification No 1597 SO 2093 (E) dated 09.07.2013. Once the notification is issued and the lands vested with the Central Government free of all encumbrances under Section 3 (D) (i) of the National High Way Act, 1956, it shall not be called into question by any court or any other authority. The counsel also reiterated the arguments advanced by the other respondents regarding the procedural compliances under the NH Act, 1956.

27.The respondents, in sum, asserted that the existing NH-45C runs through dense built up and commercial area of villages of Sundaraperumalkoil, Swamimalai, Papanasam, Rajagiri, Ayyampettai, Vayalur which span from KM 128/740 to Km 163/640 and to avoid demolition of more buildings,/structures etc, the consultant had proposed a bypass in the stretch in their detailed project report and sought to reject all allegations of the petitioners.

28.Before going into the details of case, it is necessary for the stake holders to understand the law of land acquisition which is compulsive alienation of right to property. The land acquisition has evolved over a period of time. The law as it has evolved attempts to strike a fine balance between the compulsive need of land resources for development of public infrastructure and the settling of fair compensation for compulsive alienation of the right to property of the individuals. The law of land acquisition has evolved in leaps in the present decade. The legitimacy for land acquisition is derived from the maxim that welfare of people is paramount in law. The law of compulsory purchase in UK or the Power of eminent domain as in the US empowers the state to compulsorily acquire land for use of the state and its policies for the larger good of the public under



the principles of utilitarianism. But such a draconian power of the state is an exception and not available as a rule. Such exception is available only in cases of acquisition for stated public purpose. The right to property is protected under Article 19 and Article 31 of the Constitution of India. The right that was absolute was done away with by way of enactment of Article 31 A by the Constitution (First) Amendment Act, 1951 which empowered the state to compulsorily acquire lands for stated public purpose and provided for payment of compensation at a rate not less than the market value of the property.

29. The erstwhile land acquisition law that was opaque in the past and gave rise to many litigations and mass agitations was rescinded and the new land acquisition law viz. Right to Fair Compensation and Transparency in Land Acquisition Act, 2013 was enacted by the Parliament. As the title suggests, Fair compensation and Transparency in acquisition proceedings are central to the construct of the Act. Under the new Act, the compensation is paid on the fair market value of the acquired property. An additional amount ranging from an amount equivalent to the market value of the property or double the market value for compulsory parting of land and a solatium of 15% of the market value is provided under the Act. Besides, provisions for rehabilitation are also provided under the Act. It is amusing to see that despite the largesse, adequately compensating the acquired land is promised under the Act, litigations don't stop indicating that some thing is terribly wrong with the implementation of the Act. It is difficult to comprehend how any one would resist to surrender the property to the state for public infrastructure development when the state offers more than double the market value of the property besides rehabilitation.

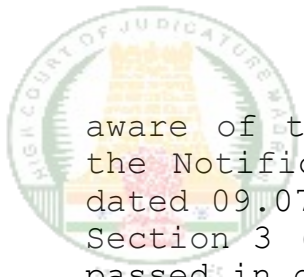
30. From the cases that come before this court, it is noticed that the implementation of the land acquisition Act is far from satisfactory and leaves much to be desired. The acquisition officers are to realize the sensitivity surrounding the compulsory land acquisition contemplated under the Act and should act as facilitators for transfer of the land from private ownership to the state rather than authoritarian rulers of the law. The officers have an onerous responsibility under the Act to explain the rights of the land owners under the Act and provide satisfactory explanation to queries/apprehensions/concerns raised by the land owners and very particularly the objectors regarding the equity and fairness in finalizing the project alignment, manner of arriving at the fair market price with specific references to the scheme of the Act and the remedies available to the landowners under the Act. The objectives of the Act can be achieved only if all relevant information is liberally made available in the public domain and produced to the objectors on demand. It should be borne in mind that the land owners include people with inadequate literacy and aged people who struggle to effectively participate in the land acquisition process to avail their rights.



31. Coming to the case on hand, the fact of filing of representation dated 29.07.2012 on behalf of the residents of the Bharathiyar Nagar of Thiruvazhanchuli Village explaining the reasons why the acquisition should not be done acquiring the lands of the petitioners and others living in the said village is not denied by the respondents. The fact of survey being conducted 1000 metres away from the eastern side of the street where the petitioners reside, subsequent to the above representation and the erection of survey sticks were also not denied by the respondents. The fact of filing of written representation dated 02.04.2013 in response to the Notification in NA KA No 1046 of 2011 dated 05.02.2013 at the time of personal hearing filed by the petitioners was also not denied by the respondents. The objection of the petitioners that the alignment was not in straight line is also not assailed by the respondents. The non speaking nature of the order indicates that the rights of the landowners under the law is not adequately addressed by the respondents. The survey work done by the officers in discharging their duty in respect of the acquisition proceedings before and after the issue of the notification dated 05.02.2013 did not match up and only reinforces the apprehension of the petitioners.

32. It is sickening to note that the details of the landowners do not find mention in the notification. When the law is making progress in terms of wisdom and utility and strive to promote transparency and fairness to make the process of acquisition a fair participative process, the officers implementing the law appear to regress and are turning opaque. I fear, the authorities are inventing novel ways to turn opaque and frustrate the legislation however progressive the laws are. There is no effort taken to explain and convince the land owners about how and why the alignment is not in a straight line. The authorities failed to clear the apprehensions of the petitioners that the alignment was formed with equity and fairness without any bias. The authorities failed to explain why the project alignment was changed or not changed from the original one when objection was made by a village in their representation dated 29.07.2012. The authorities have not countered the statement of the petitioners that the survey was conducted 1000 feet east of the road from the petitioner's property and why the same was shunned.

33. From the above, it is clear that the acquisition of the petitioners' lands is not made in the spirit of the National Highways Act, 1956 read with The Right to Fair Compensation and Transparency in Land Acquisition Act, 2013 as applicable to the present cases. This court is tempted to quash the notification in NA KA No 1046 of 2011 dated 05.02.2013 issued under Section 3 (A) (1) of the National High Way Act, 1956. But it has been mentioned by the 5th respondent that the four lane public Road Project is fully laid excepting the stretch covering the petitioner's land because of the interim order of status quo passed by this court in respect of the petitioner's land. It is distressing to note that the 5th respondent,



aware of the interim order of status quo, had taken defence under the Notification published in Gazzete of India No 1597 SO 2093 (E) dated 09.07.2013. The said notification of declaration issued under Section 3 (D) of the Act, to the extent of the petitioners' lands is passed in defiance of the status quo ordered by this court.

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34. In view of the fact that the project is already been completed barring the petitioners' lands, this court does not think it prudent to grant the prayer of the petitioners at this distant time. However, this court is convinced that the Competent Authority has not engaged the petitioners fairly and has slayed the legitimate rights of the petitioners conferred under the Acts. It is imperative to hold that it is a bare minimum necessity to publish the names of the landowners in the Notification issued under Section 3 (A) of the Act, even when the object of it is limited to making known the land owner about the acquisition. In the instant case, the petitioners are already aware of the acquisition. Therefore, no purpose will be served by interfering with the Section 3 A Notification in NA KA No 1046 of 2011 dated 05.02.2013. The Notification in the Gazzete of India No 1597 SO 2093 (E) dated 09.07.2013 publishing the declaration issued under Section 3 D of the National highway Act, 1956 to the extent of including the petitioners' lands is passed in defiance of the interim order of Status Quo made by this court and therefore that portion of the Notification No.1597 SO 2093 (E) dated 09.07.2013 is liable to be struck down. The order in NA KA No 1046/2011/Aa/The.Ne./Tiruvarur dated 16.04.2013 passed by the respondents in respect of the petitioners' lands and house property mentioned in the respective writ petitions, is arbitrary and unilateral and therefore liable to be set aside. The respondents are directed to proceed with the land acquisition afresh in respect of the petitioners from the stage of filing objection in response to the Section 3 A Notification in NA KA No 1046 of 2011 dated 05.02.2013. All relevant information/materials regarding the land acquisition should be made available to the petitioners to enable them to present their case effectively to achieve the rights guaranteed to them under the laws. The acquisition of the land of the petitioners shall be done only in terms of the procedures laid down in the laws giving adequate opportunities to the petitioners to present their case/claims. No arbitrary acquisition is permissible.

The Writ Petitions are allowed on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/ True Copy /

Sub Assistant Registrar (CS-II)



To

1) The Director,
Ministry of Road Transport and Highways,
(Department of Road Transport and Highways),
Union of India,
New Delhi.

2) The Competent Authority and
Special District Revenue Officer, (Land Acquisition)
National Highway No.67 and 45C,
Vikkiravandi-Kumbakonam-Thanjavur Section,
No.12, Tamilzh Nagar, Ilamal,
Thiruvarur.

3) The District Collector,
Thanjavur District,
Thanjavur.

4) The Special Tahsildar, (LA)
Unit-II, National Highway No.45C,
83, Srinagar Colony,
Dr.Virudagiri Children's Hospital,
I Floor, Kumbakonam.

5) The Project Director,
National Highway Authority of India,
Office at Project Director,
Natarajapuram,
Medical College Road,
Thanjavur.

+2 CC to Dr.R.RAJAGOBAL, Advocate (SR-66783[F] dated 04/06/2019)

+6 CC to M/s.A.RAHUL, Advocate (SR-66957[F] dated 04/06/2019)

W.P(MD)Nos.7802 to 7807 of 2013
04.06.2019

ES/04.06.2019/16P/14C