

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.10.2020

DELIVERED ON: 28.10.2020

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

WP.NO.12651 OF 2020

AND

WMP NOS.15620 & 15621 OF 2020

R.Cheran

...Petitioner

.Vs.

- 1.The Government of Tamil Nadu,
Represented by the Secretary to Government,
Department of Highways,
Fort St. George,
Chennai - 9.
- 2.The Special District Revenue Officer (Land Acquisition),
Chennai-Kanyakumari Industrial Corridor Project,
7, Postal Colony,
Kanchipuram - 631 501.
- 3.The Special Tahsildar (Land Acquisition),
Chennai-Kanyakumari Industrial Corridor Project,
State Highways - 09, Cuddalore - Madapattu Division,
Cuddalore - 607 001.

.. Respondents

PRAYER:

Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to Notification No.37/2018/A1/(S.H.09) dated 26.12.2018 issued by the 2nd respondent for acquisition of lands in Kanisampakkam Village-II, Panruti Taluk, Cuddalore District for the purpose of extension of State Highway No.09, Cuddalore-Panruti Road under the Chennai-Kanyakumari Industrial Corridor Project and quash the same insofar as the petitioner 's land in S.No.120/4C1A1 and land with house in S.No.121/2D in Kanisampakkam -II Village, Panruti Taluk, Cuddalore District are concerned and to consequently direct the respondents not to interfere with the peaceful possession and enjoyment of the above mentioned lands of the petitioner.

For Petitioner : Ms.K.Nithyashree

For Respondents : Mr.S.R.Rajagopal
Additional Advocate General
Assisted by:
Mr.V.Anandamoorthy
Additional Advocate General

ORDER

This Writ Petition has been filed challenging the Land Acquisition Notification dt. 26.12.2018, issued by the 2nd respondent under section 15(2) of the Tamil Nadu Highways Act, 2001 (hereinafter called as 'the Act').

2. The petitioner is the owner of the property in S.No.121/2D, measuring about acre 0.10 $\frac{3}{4}$ at Chithiraisavadi Village, Cuddalore District, wherein, the petitioner has also constructed a house property. The petitioner is also the owner of the land in S.No.120/4C1A1, measuring an extent of 2332 $\frac{1}{2}$ sq. feet in Kanisampakkam Village, Cuddalore District. Insofar as the first property is concerned, the Patta is in the individual name of the petitioner and for the second property, the petitioner is holding a joint Patta along with other landowners in the same survey number.

3. The second respondent issued the Impugned Notification dt. 26.12.2018, under Section 15(2) of the Act, notifying various survey numbers and it included the property belonging to the petitioner also. Immediately after the notification was published, a notice was also issued individually to the petitioner dt.07.01.2019, by the 2nd respondent. The petitioner submitted his objections on 08.01.2019. The main crux of the objection was that this is the only property possessed by the petitioner and he has no other house property and he requested the respondents to reroute the laying of the Highways by exempting the property belonging to the petitioner. The objections given by the petitioner was placed before the requisitioning body and their views were also taken in writing.

4. The petitioner was directed to appear for personal hearing before the 2nd respondent on 15.04.2019. This was an enquiry conducted by the 2nd respondent under Section 15(3) of the Act r/w Rule 5(3) of the Tamil Nadu Highways Rules, 2003. The petitioner again submitted his objections at the time of enquiry.

5. An amendment notification was published dt. 06.01.2020, modifying the extent of lands to be acquired. After the issuance of this notification, no enquiry was conducted. Ultimately, the notification under Section 15(1) of the Act, was published in the Gazette on 25.07.2020, which has the legal effect of vesting the lands acquired in favour of the Government. Thereafter, the petitioner was called for enquiry under Section 19 of the Act, for fixation of compensation and the petitioner also submitted his objections and the claim made by him on 10.09.2020.

6. The second respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

"3. With regard to the averments in paragraph 2, it is submitted that the Government of Tamil Nadu, have proposed to acquire an extent of 23040 sq.mts of lands in No.57 Kanisapakkam-II Village in Panrutti Taluk in Cuddalore District, which includes S.No.120/4C1A1 measuring an extent of 2697 Sq.mts. of dry lands owned by 11 pattadars including the writ petitioner and a house in S.No.121/2D measuring 384 Sq.mts., for the purpose of widening the State Highway Road SH-09, Cuddalore in order to regularize the increasing volume of traffic and for setting up business and facilitating the efficient movement of goods and people and to maintain the free flow of vehicles under the Chennai-Kanyakumari Corridor Project. Accordingly this respondent issued the notification in Form-A, under section 15(2) of the Tamil Nadu Highways Act 2001 (Tamil Nadu Act 34 of 2002) duly furnishing the details of lands proposed for acquisition, etc., as per Ref.No.37/2018/A1 (SH-09) dt.26.12.2018. The aforesaid notification was published in the Tamil Dail Diamalar and in the English Daily. The New Indian Express on 03.01.2019. Subsequently, an Amendment was issued to the above Notification for Acquisition of lands for an extent of 19982 Sq.mts., of lands which includes S.No.120/4C1A1 measuring to an extent of 2202 Sq.mts. Of dry lands owned by 14 pattadars including the writ petitioner and a house in S.No.121/2D measuring 386 Sq.mts. In the aforesaid notification dated 26.12.2018, the owner or any other person who are having interest in the property, were advised to sent their objection in writing to the Special

District Revenue Officer (LA), Chennai-Kanyakumari Industrial Corridor Project, Kancheepuram and to show cause as to why their land should not be acquired for the above said public cause within 30 days from the date of Publication of the notice. An enquiry under the aforesaid notification under Sec.1592) of the Tamil Nadu Highways Act, 2001, was proposed to be conducted by this respondent from 11 am to 2.00 pm on 15.04.2019 at the office of the 3rd respondent at State Highway-09, No.06, ALE campus Cuddalore and the notice in Ref.No.37/2018/A1(SH-09) dt.01.04.2019 was sent to the land owner/interested person over the property. The land owner including the writ petitioner raised objection against the acquisition and requested to re-route the proposed project. The aforesaid objection to the land owners were forwarded to the requisitioning body, viz, the Divisional Engineer (H) Chennai - Kanyakumari Industrial Corridor Project, Cuddalore for their remarks. The Divisional Engineer (H) Cuddalore in her letter No.31-65/A2, dated 4.3.2019, 31-148/2019/A2 dt.27.3.2019, 31-145/2019/A2, dated 4.3.2019, 31-148/2019/A2 dt.27.03.2019, 31-145/2019/A2 dt.08.04.2019 had stated that, in order to avoid traffic congestion, the Engineers Expert Committee have decided and got approval for the Corridor Project and since the project is in the implementation stage, there is no chance for re-routing that corridor project. It is further submitted that on the objection petition, this respondent conducted enquiry on 15.04.2019 along with the D.E(H), Cuddalore and rejected the petition based on the purpose of the project and the remarks offered by the requisitioning body. Hence all the procedures laid down in the Act has been duly adhered to by this respondent and as such, the proceedings in not liable to be quashed.

4.With regard to the averments in paragraphs 3 to 11, it is submitted that the notice under Sec.15(2) of the Tamil Nadu Highways Act 2001 (TN Act 34/2002) for acquiring an extent of 19982 Sq.mtr of Dry lands including the petitioner land in S.No.120/4C1 was published in the Tamil Daily Dinamalar and

in the English Daily. The New Indian Express on 03.01.2019. The petitioner has submitted his objection on 20.03.2019 and the same was forwarded to the requisitioning body viz, the Divisional Engineer (H) Chennai - Kanyakumari Industrial Corridor Project, Cuddalore. It was replied that with a view to avoid traffic congestion, the engineers Expert Committee have decided and got approval for the Corridor Project and as such, in the state of implementation process there is no chance for re-routing the Corridor Project. Subsequently this respondent conducted enquiry on 15.04.2019 with the objection in the matter along with the Divisional Engineer (H) Cuddalore and this respondent has rejected the objection considering the purpose of the project and the remarks offered by the requisitioning body on the objection. It is also submitted that during the enquiry conducted with the land owners the need for the implementation of the scheme was explained in detail by the requisitioning body and they were informed about the procedure for fixing the land value, building value and tree value, etc. in accordance with the provision under Sec.26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and resettlement act, 2013. Moreover, for all the Projects where acquisition of lands is involved, the compensation entitled to the land owners will be calculated according to the provisions of RFCTLARR Act, 2013 and as such there will be no variation as alleged. Subsequently, this respondent has sent proposal for approval and causing publication of notice under Section 15(1) of the Tamil Nadu Highways Act 2001 in the Tamil Nadu Govt.Gazette, to the Commissioner of Land Administration, Chennai-5 after the scrutiny of the aforesaid proposals sent by this respondent has approved the same as per his order in proc.Roc.No.12/6744/2020 dt.22.07.2020 in exercise of the powers conferred under Sec 15 (3) of the Tamil Nadu Highways Act 2001 read with Rule 5(4) of the Tamil Nadu Highway Rules 2003 and G.O.Ms.No.65, Highway and Minor, ports Department dt.29.04.2020. It is further submitted that as a next step in the proceeding, this respondent has conducted direct

talk with the land owner including the writ petitioner on 10.09.2020, in accordance with the provision under Sec 19(2) of the Tamil Nadu Highways Act 2001, to fix the land value for the lands proposed for acquisition and the objection expressed by the land owners including the writ petitioner during the aforesaid talk will be taken for due connotation by this respondent while fixing the value for the lands proposed for acquisition strictly in accordance with the provision under Sec 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013. The contentions raised are presumptuous in nature and hence not acceptable. It is further submitted that the application preferred by the petitioner under the Right to Information Act 2005, was duly replied by the Public Information Officer/Rehabilitation and Resettlement Officer (LA), Chennai-Kanyakumari Industrial Corridor Project, Kancheepuram by stating that the Land Acquisition proceedings would continue one by one and in view of the on-going nature of LA proceedings, the information sought by the petitioner could not be supplied and however, since the notification under Sec.15(2) of the Tamil Nadu Highway Act 2001 was already published and available, the same was supplied to him. Hence contentions to the contrary are not maintainable.

7. The learned counsel for the petitioner made the following submissions:

- The petitioner is an agricultural Coolie and had borrowed money for construction of house in S.No.121/2D and he is till repaying the loans and if he is deprived of his property, the petitioner will be put to untold hardship.
- The petitioner was not even informed about the total extent of property that is going to be acquired from the petitioner in S.No.120/4C1A1. The notification only indicates the total extent that is going to be acquired in this survey number which consists of different owners.
- The 2nd respondent did not have any power or jurisdiction to pass an order while conducting an enquiry under section 15(3) of the Act and it is

only the Government who should pass the necessary order and in this case the Government has mechanically confirmed the Order passed by the 2nd respondent and therefore the notification issued under Sec 15(1) of the Act, is unsustainable in law.

- The proceedings of the Government clearly reflects non application of mind and there are absolutely no reasons found in the proceedings of the 2nd respondent dt.15.04.2019
- The learned counsel in order to substantiate her submissions, relied upon the following Orders passed by this Court:
 - a.Pavai Varam Eductional Trust v. District Collector, W.P.No.10248 of 2018, dt. 16.07.2018.
 - b.M.Manoharan v. state of Tamil Nadu & Others, WP.no. 26070 of 2018 dt. 29.10.2018.

8. Mr.S.R.Rajagopal, learned Additional Advocate General, appearing on behalf of the respondents, made the following submissions:

- The only objection made by the petitioner is for rerouting leaving alone the property of the petitioner and this was found to be untenable since the corridor project was prepared by an Expert Committee and their recommendations were approved and therefore, it is not possible to reroute the laying of the Highways.
- The 2nd respondent had merely placed the objections received from the petitioner and the views of the Highways Department and this report was placed before the Commissioner of Land Administration and thereafter an order was passed through proceedings dt. 15.04.2019. The Commissioner of Land Administration did not mechanically confirm the proceedings of the 2nd respondent dt. 15.04.2019.
- The proceedings of the 2nd dt 22.07.2020 is perfectly in accordance with Section 15(3) of the Act r/w Rule 5(3) of the Rules and there is no ground to interfere with the same.
- The petitioner will not be put to hardship since the 2nd respondent in the counter affidavit has categorically taken a stand that the compensation will be calculated in accordance with the 2013

Act and at para 11 of the counter, the solatium and other heads under which the compensation will be paid, has been specifically mentioned and this was also informed to the petitioner when he attended for the enquiry under Section 19(2) of the Act.

9. This Court has carefully considered the submissions on either side and materials available on record.

10. The Government of Tamil Nadu proposed to acquire lands in order to regularize the increasing volume of traffic and to maintain free flow of vehicles under the Chennai-Kanyakumari corridor project. Accordingly, the 2nd respondent issued the notification under Section 15(2) of the Act, furnishing the details of the lands proposed to be acquired. The notification also covered the property belonging to the petitioner. The objection given by the petitioner as could be seen from his objection letters dt. 08.01.2019 and 15.03.2019, is that he wanted rerouting of the laying of the Highways by exempting the property belonging to the petitioner. The petitioner has also stated the hardship that he will face, if his property is acquired and that he will lose his only house property.

11. The objections raised by the petitioner was placed before the Highways Department and the department has given its views stating that an Expert Committee has decided and got approval for the corridor project and therefore there is no chance for rerouting, as requested by the petitioner.

12. Under the scheme of the Act, the 2nd respondent is only expected to conduct an enquiry in the presence of land owners and the authorities of the Highways Department. Rule 5(3) of the Rules also contemplates recording of evidence in appropriate cases. Thereafter, the 2nd respondent is expected to place the entire records before the Government. The Government has to pass orders under Rule 5(4) on considering the entire records and thereafter the final notification will be issued under Section 15(1) of the Act.

13. A careful perusal of the enquiry conducted by the 2nd respondent and proceedings dt. 15.04.2019, shows that the 2nd respondent has proceeded to pass an order rejecting the objections made by the petitioner. It is not known as to why the authorities are repeating the same mistakes in every case.

The earlier orders referred by the learned counsel for the petitioner and which has been mentioned supra, also deals with cases where the authority, who was supposed to collect the objections and submit his report before the Government, has proceeded to pass orders. Those orders were interfered by this Court and a direction was given to the authority to conduct the enquiry and submit the report to the Government and thereafter, the Government was directed to pass appropriate orders under Section 15(3) of the Act r/w Rule 5(4) of the Rules. If the proceedings dt. 15.04.2019 had formed the basis for issuing the notification under Section 15(1) of the Act, this Court would have surely interfered and remanded the matter back to the 2nd respondent and given further directions to the Government. However, in this case, the proceedings had crossed that stage and the Commissioner of Land Administration [the Government has authorised Commissioner of Land Administration, Chennai in exercise of its power under Section 56 (1) of the Act] had independently considered the objections given by the land owners and the explanation given by the Highways Department and passed an order on 22.07.2020. It is only thereafter the notification was issued under 15(1) of the Act on 25.07.2020.

14. A careful perusal of the proceedings dt. 22.07.2020, shows that the Commissioner of Land Administration has independently applied his mind and found that the objections raised by the land owners are not sustainable. This proceedings dt. 22.07.2020 read along with the files circulated to this Court, clearly reveals the fact that there was application of mind and the objections given by the petitioner was rejected after duly considering the same.

15. The nature of objection raised by the petitioner for rerouting was found to be untenable in view of the earlier decision taken by an Expert Committee, which decided the route to be laid for the Corridor Project. This Court cannot sit on judgment the opinion given by an Expert Committee. Subsequently, notification has also been published in the Government Gazette under Section 15(1) of the Act and thereby the lands have vested with the Government.

16. On a careful perusal of the entire materials placed before this Court and after considering the submissions made on either side, this Court does not find any ground to interfere with the acquisition proceedings. It is made clear that the stand taken by the 2nd respondent in the counter affidavit with regard to the payment of compensation particularly at paragraphs 4 and 11 of the counter affidavit shall be strictly complied

with and the petitioner shall be paid the compensation within a period of eight weeks from the date of receipt of a copy of this order.

17. This Writ Petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

KP

To

- 1.The Secretary to Government,
The Government of Tamil Nadu,
Department of Highways,
Fort St. George,
Chennai - 9.
- 2.The Special District Revenue Officer (Land Acquisition),
Chennai-Kanyakumari Industrial Corridor Project,
7, Postal Colony,
Kanchipuram - 631 501.
- 3.The Special Tahsildar (Land Acquisition),
Chennai-Kanyakumari Industrial Corridor Project,
State Highways - 09, Cuddalore - Madapattu Division,
Cuddalore - 607 001.

+1cc to Mr.V.Surender, Advocate, S.R.No.35268

W.P.No.12651 of 2020

SRA (CO)
CS/20/11/2020

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