

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.NOS.13976 AND 15123 OF 2020

AND

WMP NOS.17360 AND 17361 OF 2020

W.P.No.13976 of 2020

1.M.Leninkumar
2.K.Natesan
3.S.Jothi
4.C.Muthusamy
5.P.Annamalai
6.R.Subramaniam
7.R.Sellappan
8.P.Pandian
9.M.Karunanithi

..Petitioners in
W.P.No.13976 of 2020

.Vs.

1. The State of Tamilnadu
rep.by The Additional Chief Secretary,
Highways and Minor Ports Department,
Secretariat,
Chennai 600 009.
2. The Special District Revenue Officer,
(Land Acquisition Officer),
Chennai-Kanniyakumari Industrial
Corridor Project,
Plot No.74, Vijayaraghavan Nagar,
Zahir Ammapalayam-636 302,
Salem District.
3. The Divisional Engineer,
Highways Department,
Vaigai Street,
Highways Nagar,
Salem 636 005.

4. The District Collector,
Namakkal District,
Namakkal.

..Respondents in
W.P.No.13976 of 2020

Prayer in W.P.No.13976 of 2020:

Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned in Na.Ka.No.7/2019/A3(SH-95) dated 17.06.2020 passed by the 2nd respondent, quash the same and consequently forbear the respondents from acquiring our houses constructed S.F.No.299, Akkiyampatti Village, Sendamgalam Taluk, Namakkal District for the formation/widening of the State Highways by considering our objections dated 06.05.2020 and 25.08.2020.

W.P.No.15123 of 2020

1.M.Leninkumar
2.K.Natesan
3.S.Jothi
4.C.Muthusamy
5.P.Annamalai
6.R.Subramaniam
7.R.Sellappan
8.P.Pandian
9.M.Karunanithi

..Petitioners in
W.P.No.15123 of 2020

.Vs.

1. The Commissioner of
Land Administration (FAC),
Ezhilagam,
Chepauk,
Chennai 600 006.

2. The Special District Revenue Officer,
(Land Acquisition Officer),
Chennai-Kanniyakumari Induatrial
Corridor Project,
Plot No.74, Vijayaraghavan Nagar,
Zahir Ammapalayam-636 302,
Salem District.

3. The District Collector,
Namakkal District,
Namakkal.

4. The Divisional Engineer,
Highways Department,
Vaigai Stret,
Highways Nagar,
Salem 636 005.

..Respondents in
W.P.No.15123 of 2020

Prayer in W.P.No.15123 of 2020:

Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records relating to the acquisition notification in Roc.No.J1/7966/2020 in No.VI(1)/248(a-10)/2020 published in Tamilnadu Government Gazette Extraordinary NO.296, Part VI-sec.1 dated 23.07.2020 issued by the 1st respondent and quash the same insofar as the petitioners' houses in Sr.Nos.1 to 3 and 6 to 12 are concerned.

For Petitioners : Mr.N.Manoharan
(in Both WPs)

For Respondents : Mr.S.R.Rajagopal
(in Both WPs) Additional Advocate General
Assisted by:
Mr.V.Anandamoorthy
Additional Advocate General

COMMON ORDER

The issues involved in both the Writ Petitions are common and therefore they are taken up together and this common order is passed.

2. The petitioners have challenged the impugned proceedings of the 2nd respondent dt. 17.06.2020 in W.P.No.13976 of 2020. The same petitioners have also challenged the subsequent notification issued by the 1st respondent under Section 15(1) of the Tamil Nadu Highways Act, 2001 (herein after called 'the Act') dt. 23.07.2020 in W.P.No.15123 of 2020.

3. The petitioners are the owners of various house properties constructed in S.F No.299, Akkiyampatti Village, Namakkal District. The Government of Tamil Nadu initiated acquisition proceedings under the Highways Act, for the purpose of formation of Chennai-Kanyakumari Industrial Corridor Project. The 2nd respondent issued a notice dt. 23.03.2020 under Section 15(2) of the Act, which was published in the daily newspaper on 21.04.2020. The 2nd respondent also issued individual notices to the petitioners. The petitioners submitted their objections

immediately on receipt of the notice. Thereafter, notices were issued to the petitioners dt. 18.05.2020, by the 2nd respondent for conducting enquiry under section 15(3) of the Act r/w Rule 5 (3) of the Tamil Nadu Highways Rules, 2003. The petitioners appeared for the enquiry and submitted their objections along with all the relevant materials. The 2nd respondent proceeded to pass the Impugned Order dt 17.06.2020 and this has been put to challenge in W.P.No.13976 of 2020. Thereafter, 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] has proceeded to publish the notification under Section 15(1) of the Act, in the Government Gazette on 23.07.2020. This has been put to challenge by the petitioners in W.P. No.15123 of 2020.

4. The 2nd respondent has filed a common counter affidavit in both the writ petitions. The relevant portions in the counter affidavit are extracted hereunder:

8. It may be further reported that regarding paragraph 7 to 10 of the Affidavit, that for the purpose of widening the Mohanur-Namakkal- Senthamangalam-Rasipuram Road (SH-95) the Divisional Engineer (Highway) CKICP had sent land Plan Schedule on 18.03.2020. The Notification under Sec.15(2) of State Highways Act 2001 was published by Special District Revenue Officer (L.A), CKIC Project, Salem on 21.04.2020 in Dinamani and Indian Express Newspapers. As per the procedures laid down in this Act subsequently individual notices were issued and served to the affected pattadhars on 22.04.2020.

9. It is further after submitted, that the receipt of individual notices, all the petitioners in W.P.13976/2020 have given their objection letters for land acquisition addressing Special District Revenue Officer (L.A), CKIC Project had conducted an "objection enquiry" on those objection petitions on 26.05.2020 at Highways Traveller's Bungalow, Namakkal. In the meantime these petitions were forwarded to Divisional Engineer (Highways), CKIC Project to offer his feasibility Report on their grievances. The Divisional Engineer (Highway) CKIC Project had given his rejection report on 21.05.2020 stating the reason that the proposed and approved alignment cannot be altered due to the significance of the public utility of this road. In the objection enquiry

on 26.05.2020 due opportunity of being heard was extended to all the objectioners and the non feasibility of redressing their grievances was properly explained to them by Special District Revenue Officer (L.A) CKIC Project in person.

10. Holding the significance of the Public utility of the road in mind and after careful consideration, as per the provisions of Sec.15 (3) of Highways Act 2001, a reply letter in the form of Proceedings was issued to all the objections overruling their objections. The Proceedings drafted to this effect was submitted to the Commissioner of Land Acquisition for his concurrence and order on 17.06.2020, and thereafter the concurrence and Order to this effect was passed by the Commissioner of Land Administration on 20.07.2020. The relevant portion of the order in his Proceedings is given as under:-

"The records of enquiry submitted by the Special District Revenue Officer (L.A) are carefully examined. The objections made are against the proposed alignment. The objections made are not specific and general in nature. They deserve no consideration. Therefore, in exercise of the powers conferred under Sec.15(3) of Tamil Nadu Highways Act 2001 read with Rule provision no.5(4) of the Tamil Nadu Highways Rules 2003 and G.O.Ms.No.65 Highways and Minor Ports Department Dated 29.04.2020 each of objections of the land owners/Interested persons has been examined individually and found to have no merit. Therefore, the order of the Special District Revenue Officer (L.A), CKIC Project, Salem overruling the objections in her Lr.No.7/2019/AJ(SH-95) dated 17.09.2020 is in order".

Subsequently the notification under section 15(1) of Tamil Nadu Highways Act 2001 was published in Government Gazette on 23.07.2020. In continuation of 15(1) Notification, an enquiry under section 19(2) of Tamil Nadu Highways Act 2001 was proposed to be held on 31.08.2020, for which notices were served to all the pattadhars including these objectioners and they have received the notices but abstained from appearing for 19(2) enquiry, instead they have forwarded the very same objections once again addressing Special

District Revenue Officer (LA), CKIC, Salem through Register Post with Acknowledgement Due.

11.I respectfully submit, by following the due procedures as laid down in the Tamil Nadu State Highways Act 2001 19(2) enquiry was conducted and proposal for obtaining permission to fix the land cost was submitted to Commissioner of Land Administration on 16.09.2020 under Section 19(3) of Tamil Nadu Highways Act, 2001.

12.It is most pertinent to note that once the objections were received from the petitioners due opportunity of being heard was extended to all the objectioners as per the procedures established in Tamil Nadu Highways Act 2001 and orders passed overruling their objections. And the same was accepted and approved by Commissioner of Land Administration who is none other the Rightful competent authority to approve as per the Act.

13.It is further submitted that though the Government land is available in the opposite side of the petitioners land, it is proposed to establish a Bus bay and Bus Stand with all facilities in that place only. Hence the said Government lands are not available for this purpose. The acquisition of very meagre portion of the objectioners land could not be avoided and even if the opposite side land is to be utilized for road extension the alignment will result in a curve and ultimately will result in a lot of frequent road accidents. It is most respectfully submitted that with respect to the averments made by the petitioners that there is sufficient Government Lands are available in the opposite side of the petitioners lands for the road extension work are totally false and baseless. Because after completely utilizing all the available Government Lands in the opposite side for the extension of road work, Bus bay and other related public utilities only, in the unavoidable circumstances the very very meagre portions of the petitioners lands are going to be acquired for the proposed road extension work . It is most pertinent to note that the lands in the opposite side are coming under

Akkiyampatti Village and apart from utilizing all the available government poramboke land a small portions of pattadhars land also going to be acquire for the proposed road extension work in the opposite side also.

It is further submitted that the Petitioners claim of lands are coming under Bommasamuthiram Village and it is rue that 6 out of 9 petitioners have encroached the Government Poramboke land for the construction of their structures. It is true that in the process of proposed acquisition of land for road extension work from the petitioners structures, a major portion of the lands are going be taken from their encroached portion of the Government Poramboke land and a minimum quantum of land only going to be taken from their structures in their patta land.

The following tabular column will show the stretch of land proposed to be acquired from the Government Poramboke land encroached by the 6 out of 9 petitioners. Apart from this only a meagre portion of their structures in their patta land are going to be affected in the proposed land acquisition for the road extension work.

Tabular Column:

S.No.	Survey No.	Government Poramboke Land
1.	299/3F	Cement flooring 1.45 m x 1.6 m
2.	299/3L1	Asbestos frontage 7.75 m x 2.5 m
3.	299/3L2	Asbestos frontage with Cement flooring 9.75 m X 1.65 m
4.	299/3A	Asbestos frontage with Cement flooring 10.4 m X 1.5 m
5.	299/3C	Cement flooring 1.30 m X 1.00 m
6.	299/3G	Steps 3.7 m X 0.3 m

5. Heard Mr.N.Manoharan, learned counsel appearing on behalf of the petitioners and Mr.S.R.Rajagopal, learned Additional Advocate General appearing on behalf of the respondents.

6. Various grounds were raised on either side during the course of arguments. This Court will take into consideration two main issues that would require an answer for the purpose of deciding these Writ Petitions. Those issues are;

(a) Whether the 2nd respondent was competent to pass orders after conducting enquiry under Section 15(3) of the Act read with Rule 5(3) of the Rules ? and ;

(b) Whether the order passed by the 1st respondent dt. 20.07.2020 reflects any application of mind or it was mechanically passed based on the opinion given by the 2nd respondent ?

7. The learned counsel for the petitioners submitted that the enquiry conducted under Section 15(3) of the Act r/w Rule 5 (3) of the Rules is not an empty formality and it requires serious consideration more particularly when the petitioners are going to lose their only house property. In order to substantiate this submission, the learned counsel for the petitioners relied upon the judgement of this Court in Ponnayal and Others v. State of Tamil Nadu and Others reported in (2020) 7 MLJ 28. The relevant portions of the judgement are extracted hereunder:

19.A combined reading of Section 15(2) of the Act and Rule 5(3) of the Rules, 2003, makes it very clear that the objector should be heard in-person and if necessary, even evidence can be recorded. For better appreciation, the relevant provisions are extracted hereunder:

Section 15(2) of the Act

15. Power to acquire land

"15. (2) Before publishing a notice under subsection (1), the Government shall call upon the owner and any other person having interest in such land to showcause within such time as may be specified in the notice, why the land should not be acquired. The Government shall also cause a public notice to be given in such manner as may be prescribed."

Rule 5(3) of the Rules, 2003

5. Manner of publication of notice

"5. (3) On the date fixed for enquiry or any other date to which the enquiry may be adjourned, [the Government or the Collector or the Special Deputy Collector (Land Acquisition), Tamil Nadu Urban Development Project III], as the case may be, shall hear the objector or a

person authorised by him in this behalf and the representative, if any, of the Highways Department and record any evidence that may be produced in support of the objection and in support of the need for acquiring the land."

A reading of the above provisions shows that the enquiry conducted by the Government is not an empty formality and the objections must be considered with all seriousness. In the present case, even though the petitioners had submitted their objections on 22.01.2019 and 24.02.2019, after the amended Notification was issued, the petitioners were never called for an enquiry and therefore, there is a clear violation of Section 15(2) of the Act read with Rule 5(3) of the Rules, 2003.

20. The Hon'ble Supreme Court, in its judgments referred supra, in very uncertain terms has held while considering the scope of Section 5-A of the Land Acquisition Act, 1894, that the objections to the acquisition proceedings is not an empty formality and that it is a substantive right. It is a right given to the land owner, giving him a reasonable opportunity to persuade the authority concerned, against the acquisition of the property belonging to him. The provision under Section 5-A of the Land Acquisition Act, 1894 is akin to Section 15 (2) of the Act read with Rule 5(3) of the Rules, 2003. It clearly contemplates a personal hearing and in this case, the objections given by the petitioners were not properly considered after the amended Notification was issued and they were not called for an enquiry and therefore, it clearly vitiates the decision-making process of the first respondent by issuing the Notification under Section 15(1) of the Act, insofar as the lands belonging to the petitioners is concerned.

8. A careful perusal of the objections given by each of the petitioners shows that certain specific grounds have been raised in the objections and the petitioners have also brought to the notice of the respondents about the availability of sufficient Government lands opposite to the property of the petitioners. The 2nd respondent has obtained the views of the Highways Department. The only view that was given by the Highways Department is that the project is an important project and there is no scope for any realignment of the route.

9. It is seen from the records that have been circulated to this Court that the 2nd respondent by letter dt. 17.06.2020, has informed the 1st respondent that the notification can be issued under Section 15(1) of the Act and the necessary particulars have been given to the 1st respondent. The 1st respondent has passed an order based on the report submitted to the 2nd respondent.

10. This Court has repeatedly held that the 2nd respondent can only conduct an enquiry by receiving the objections of the land owners and the views of the Department and the entire records must be submitted thereafter to the Government. On such submission, it is for the Government to take an independent decision. The 2nd respondent cannot pass any order rejecting the objections and it will be beyond the power and jurisdiction of the 2nd respondent to do so. In spite of repeated orders passed by this Court, the mistake keeps recurring in every case and it is found in many cases that the authority conducting an enquiry under Section 15(3) of the Act r/w Rule 5(3) of the Rules keeps passing orders rejecting the objections. Every time, this is interfered by this Court and the authority do not seem to rectify their mistakes.

11. The only authority who can consider and accept or reject the objections is the Government. The Government is the acquiring body and therefore the Act is vesting such a power only on the Government and no one else will have the power to pass such an order rejecting the objections. The first issue is answered accordingly.

12. It is true that the Government has to implement certain important projects which requires acquisition of properties. The Government exercises its power of eminent domain, but however subject to the procedure contemplated under the relevant enactment. Such procedures will have to be strictly complied with more particularly when it pertains to enactments which are expropriatory in nature. These are cases where the citizens lose their valuable property and for many a house property is a life time investment and they may not be in a position to buy or construct another house. Therefore, while considering the objections, it has to be undertaken with all seriousness and it cannot be a mechanical rejection.

13. It is seen from records that the 2nd respondent has sent a letter to 1st respondent dt. 17.06.2020, by providing

particulars to issue a notification under Section 15(1) of the Act. This has been acted upon by the 1st respondent while passing the orders on 20.07.2020. The 1st respondent is not a mouth piece of the 2nd respondent and the 1st respondent was expected to independently apply its mind before passing orders and thereafter issuing notification under Section 15(1) of the Act. The only reason given by the 1st respondent at paragraph no. 6 of the proceedings dt. 20.7.2020, is extracted hereunder:

"6. The records of enquiry submitted by the Special DRO(LA) are carefully examined. The objections made are against the proposed alignment. The objections made are not specific and general in nature. They deserve no consideration. Therefore in exercise of the powers conferred under section 15(3) of the T.N. Highways Act 2001 read with the Rule provision No.5(4) of the T.N. Highways Rules, 2003 and G.O.Ms.No.65, Highways & Minor Ports Department dated 29.4.2020, each of objections of the land owners/interested persons has been examined individually and found to have no merit. Therefore, the order of the Spl. DRO, CKIC Project, Salem overruling the objections in her lr.No.7/2019 A3 (SH-95) dated 17.06.2020 is in order.

14. It is very clear from the above that the 1st respondent has mechanically passed the Impugned Order dt. 20.7.2020, without any application of mind and without considering the objections raised by the petitioners. This order formed the basis of the notification that was issued under Section 15(1) of the Act, on 23.7.2020. The 1st respondent has mistakenly assumed as if, he is sitting on an appeal against the order passed by the 2nd respondent. In the first place, the 2nd respondent had no power or jurisdiction to pass an order. Such an order was supposed to be disregarded by the first respondent since the Act expects the 1st respondent to independently apply its mind on the report submitted by the 2nd respondent and the objections made by the land owners. This scheme of the Act has not been properly understood by the 1st respondent. Consequently, the 1st respondent has proceeded to pass a mechanical order by placing reliance upon the order passed by the 2nd respondent, which is in violation of the provisions of the Act and Rules and therefore, requires the interference of this Court. The notification issued under Section 15(1) of the Act, is only a consequence to this order and therefore, the same also requires interference of this Court, insofar as the petitioners are concerned. The second issue is answered accordingly.

15. In view of the above discussion, this Court has absolutely no hesitation to interfere with the Impugned Proceedings of the 2nd respondent dt. 17.06.2020, Impugned Order of the 1st respondent dt. 20.07.2020 and the consequent Notification dt. 23.07.2020, issued under Section 15(1) of the Tamil Nadu Highways Act 2002, insofar as the petitioners are concerned and accordingly, the same is hereby quashed. The matter is again remanded back to the file of the 2nd respondent, who shall conduct an enquiry afresh under Section 15(3) of the Act r/w Rule 5(3) of the Rules after affording sufficient opportunity to the petitioners and the Highways Department and thereafter a report shall be submitted before the Government. The Government shall thereafter independently apply its mind and pass orders in accordance with Section 15(3) of the Act r/w Rule 5(4) of the Rules. This exercise shall be completed within a period of twelve weeks from the date of receipt of copy of this order.

16. In the result, both the Writ Petitions are allowed with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Additional Chief Secretary,
The State of Tamilnadu,
Highways and Minor Ports Department,
Secretariat, Chennai 600 009.
2. The Commissioner of
Land Administration (FAC),
Ezhilagam, Chepauk,
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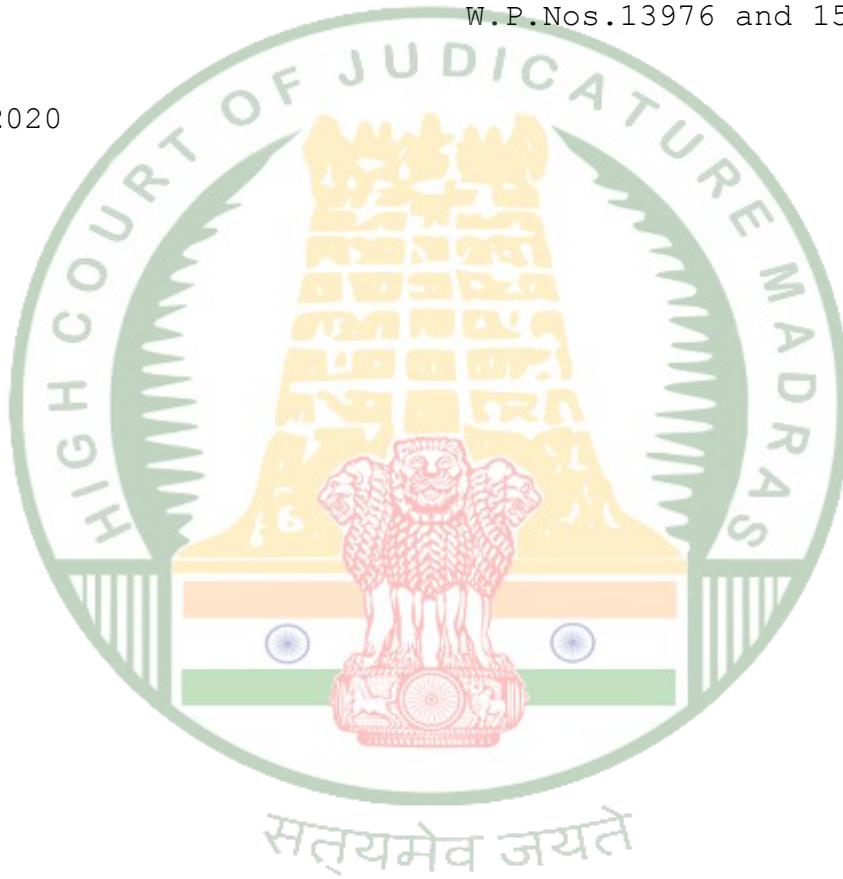
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5. The District Collector,
Namakkal District,
Namakkal.

+2cc to Mr.N.Manoharan, Advocate, S.R.No.35247 & 35248

W.P.Nos.13976 and 15123 of 2020

SRA(CO)
CS/20/11/2020



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