

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 25.08.2020

Delivered on 28.08.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP.No.18544/2019 & WMP.Nos.17860 & 17862/2019

A.Kanagasabapathi

..Petitioner

Versus

1. The State of Tamil Nadu rep.
By the Additional Chief Secretary
Department of Highways and
Minor Ports, Secretariat,
Chennai 600 009.
2. The Special District Revenue Officer
[Land Acquisition Officer]
Tamilnadu Road Development Scheme II
Salem.
3. The Project Director/Principal Secretary
Tamilnadu Road Sector Project II
171, South Kesavaperumalpuram
Greenways Road, Chennai 600 028.
4. The Superintending Engineer
Tamilnadu Road Sector Project II
Kothavari Road, Nedunchalai Nagar,
Salem.
5. The Divisional Engineer
Tamilnadu Road Sector Project II
416, Collector Office Complex
Tiruppur.

..Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relating to the impugned G.O.[D] No.250, Highways and Minor Ports [HN2] dated 20.09.2018 issued by the 1st respondent, which is published in Tamilnadu Gazette Notification in Part II - Sec.2 dated 17.10.2018, quash the same in respect of Sl.Nos.29 and 30 relating to RS.Nos.6/6A and 6/6B Kullampalayam Village, Gobichettipalayam Taluk, Erode District is concerned.

For Petitioner : Mr.N.Manokaran
For Respondents : Mr.E.Manoharan, Spl.GP

ORDER

- (1) This writ petition has been filed challenging the impugned Government Order dated 20.09.2018 issued by the 1st respondent, approving the acquisition of the lands under the Tamil Nadu Highways Act, 2001 [hereinafter called as 'the Act'] and the consequent Notification published in the Tamil Nadu Gazette on 17.10.2018, with respect to the property belonging to the petitioner.
- (2) The case of the petitioner is that the subject property was originally owned by the father of the petitioner and after his demise, the petitioner became the absolute owner of the property. The 2nd respondent issued a Notification on 27.11.2014 under Section 15[2] of the Act to acquire lands for the purpose of widening the existing Erode-Ooty State Highways and the Notification covered the lands belonging to the petitioner also. Pursuant to the said Notification, the 2nd respondent issued a show cause notice dated 27.11.2014 under Section 15[2] of the Act, directing the petitioner to submit his explanation within a period of thirty days. Even according to the petitioner, the objection / representation was given only on 24.10.2016 and this was followed by a number of reminder representations.
- (3) The 1st respondent, thereafter issued the impugned Government Order dated 20.09.2018 under Section 15[1] of the Act and this was published in the Government Gazette on 17.10.2018. Aggrieved by the same, the present writ petition has been filed before this Court.
- (4) Mr.N.Manokaran, learned counsel appearing on behalf of the petitioner made the following submissions:
- ➔ The Tamil Nadu Highways Act, 2001, has already been declared as unconstitutional by the Division Bench of this Court in the judgment rendered in WP.No.22448 of 2018 etc., batch dated 03.07.2019 and therefore, the proceedings initiated by the respondents will automatically lapse.
 - ➔ Even though the petitioner submitted the objections beyond the period fixed under the Act, the objections could have been considered since it was made even before the Government Order was published under Section 15[1] of the Act.
 - ➔ A combined reading of Section 15[2] of the Act read with Rule 5[3] of the Rules makes it very clear that the enquiry is not an empty formality and it requires a serious consideration of the objections made by the owner of the property and in the present case, the enquiry was not properly conducted.
 - ➔ The respondents did not properly conduct any technical / feasibility test at the site and the same is clear from the

fact that there is an existing road margin and a Poramboke land that is available measuring 300 ft on the southern side. (5) The 2nd respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:-

'4The enquiry was held on 28.01.2015 and in that the petitioner did not appear for enquiry. In respect of the acquisition only 6 objections were raised by the other land owners. Those representations were forwarded to the requiring body on 22.12.2014 and remarks were received from the requiring body on 09.03.2018. Thereafter on 09.04.2018, necessary proposals were submitted to the Government u/s.15[1] of Act for passing order u/s.15[3] to make publication u/s.[1] of the Act. The 1st respondent on careful consideration of the proposals and the report passed orders on 20.09.2018 and accordingly necessary publication was made on 17.10.2018 u/s.15[1] of the Act.

5 It is humbly submitted that the respondents have considered the available extent in road margin and also the measurement taken after fixing boundaries by conducting survey using total station [Electronic survey instrument] by engaging qualified and expert consultant in major road projects. Hence, the contention of the petitioner is not sustainable.

6 I humbly submit that thereafter for the purpose of fixing the market value for the subject land in order to determine the compensation u/s.19[2] of the Tamil Nadu Highways Act by way of an agreement, after due notice an enquiry was held on 12.11.2018. The land owners covered under the above said acquisition, appeared for enquiry and requested to pay the compensation based on the prevailing market value and fix the compensation, hence, the Government has accorded necessary orders on 17.12.2018 to proceed u/s.19[3] of the Act.'

(6) Mr. E. Manoharan, learned Special Government Pleader appearing on behalf of the respondents made the following submissions:-

- ➔ The petitioner was served with the show cause notice under Section 15[2] of the Act on 09.12.2014 and to substantiate the same, the acknowledgment of the petitioner on receipt of the notice was also produced for the perusal of this Court.
- ➔ The enquiry was conducted in strict compliance with Section 15[2] of the Act read with Rule 5[3] of the Rules and the petitioner did not even appear for the enquiry. The

- objections raised by the other land owners was considered.
- ➔ The order passed by the Division Bench was taken on appeal before the Hon'ble Supreme Court of India and Paragraph 158.8 of the said order has been stayed by the Apex Court. The State Government has already brought into force the Validation Act and thereby, the Act has been validated retrospectively and therefore, the acquisition of the lands under the Act is very much in force.
 - ➔ The land is already vested with the Government under Section 16 of the Act and therefore, the petitioner has lost his right to challenge the Government Order issued under Section 15[1] of the Act which was subsequently published in the Government Gazette.
 - ➔ The petitioner has chosen to sleep over his rights and has chosen to come before this Court only in the year 2019 after everything was over and on that ground alone, the present writ petition is liable to be dismissed.
- (7) This Court has carefully considered the submissions made on either side and also the materials available on record.
- (8) It is true that the Division Bench of this Court, while passing orders in WP.No.22448 of 2018 etc., batch dated 03.07.2019, has rendered the Act as null and void and consequently, all the acquisitions made under the Act on or after 27.09.2013 were held to be illegal. This judgment of the Division Bench was taken on appeal before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India, by an interim order, has stayed the operation of paragraph 158.8 of the judgment of the Division Bench. The State Government has also brought into force, the Validation Act, 2019, and got the assent of the Hon'ble President and thereby, validated all the acquisitions retrospectively from 26.09.2013. In view of the same, this Court is not in agreement with the submission made by the learned counsel for the petitioner to the effect that the acquisition itself has become illegal and therefore, the same has to be quashed.
- (9) It is clear from the records that the petitioner was served with the show cause notice under Section 15[2] of the Act on 09.12.2014. The petitioner ought to have submitted his objections within the time prescribed in the public notice issued under Section 15[2] of the Act. This objection ought to have been given within a period of thirty days from the date of notice. The petitioner did not submit any objection on time and the earliest objection made by the petitioner was only on 24.10.2016. By then, the enquiry was over and those who had submitted the objections were heard on 28.01.2015. The objections were forwarded to the State Government on 09.04.2018. The 1st respondent passed the Government Order under Section 15[1] of the Act on 20.09.2018 and it was published in the Gazette on 17.10.2018.
- (10) It is now a well settled position of law that where the

objections to the Notification are not given on time, the land owner is deemed to have waived his rights to give objections and he cannot be allowed to turn around at a later point of time and complain that a proper enquiry was not conducted by the authorities. Objections must be raised at the time of enquiry and in this case, the enquiry was completed on 28.01.2015 and whereas, the objections were given by the petitioner only on 24.10.2016. Therefore, such belated objections cannot be considered. Therefore, the contention raised by the petitioner that no proper enquiry was conducted, is hereby rejected.

(11) To support this finding, useful reference can be made to the judgments of the Hon'ble Supreme Court of India in Delhi Administration Vs. Gurdip Singh Uban and Others reported in 2000 [7] SCC 296 and the Division Bench of this Court in The Executive Engineer and Administrative Officer, Tamil Nadu Housing Board, Vellore Housing Unit Vs. S.Govindaraj and Others. In both these judgments, it has been categorically held that if the objections are not submitted by the land owners within the prescribed time limit, they cannot be later allowed to complain with regard to the enquiry conducted by the authorities. These two judgments will squarely apply to the facts of the present case.

(12) The learned counsel appearing for the petitioner raised objections with regard to the availability of Government Poramboke lands and also the existing road margin and the Technical Report has also been questioned. These are issues which are beyond the purview of judicial review and the technical details regarding the alignment of the Highways must be safely left in the hands of the Experts and this Court should not undertake the exercise of testing the Technical or Feasibility Reports.

(13) This Court does not find any reasons to interfere with the impugned Government Order dated 20.09.2018 issued under Section 15[1] of the Act and the subsequent Notification dated 17.10.2018 published in the Gazette and there are no merits in this writ petition and accordingly, this writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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Department of Highways and
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+1cc to M/s.N.Manoharan, Advocate in SR.28462

Pre Delivery Order in
WP.No.18544/2019

GP (CO)
RV (17/09/2020)

सत्यमेव जयते

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