

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	17.09.2020
DELIVERED ON	:	21.12.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.Nos.3859 of 2019, 772 and 773 of 2020

Nachimuthu Gounder ... Appellant in
W.A.3859/2019

T.M.Chinnasamy ... Appellant in
W.A.772 of 2020

1.Balasubramaniam
2.Vijayabharathy ... Appellants in
W.A.773 of 2020

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Highways Department,
Fort St. George,
Chennai - 600 009.

2.The District Collector,
Erode District.

3.The District Revenue Officer-cum-
Land Acquisition Officer,
Erode.

... Respondents in
both appeals

Prayer: Appeals filed under Clause 15 of the Letters Patent
against the common order dated 30.8.2019 made in W.P.Nos.29166,
29167 and 29168 of 2014.

WP.No.29166 of 2014:Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified calling for the records relating to the proceedings of the 3rd respondent dated 25.10.2010 in Na.Ka.No. 7247/07/B1 and the subsequent paper publication in proceedings Na.Ka. 7247/2007/B1 dated 28.01.2011 published in Daily Thanthi Erode Edition on 30.1.2011 and the consequent Proceedings in Na.Ka. 7247/2012/B1 dated 3.12.2012 and the order of the 1st respondent in G.O.(D) No.275 Highways and Minor Ports (HP1) 31.12.2013 which was published in Government Gazette dated 5.2.2014 and quash the same in so far as the petitioner land in R.S.No.325/3B Puthu Pudupalayam Village Erode Taluk and District measuring an extent of 0.36.5 Ares is concerned.[Amended as per order dated 20.07.2016 in MP.No.1 of 2015 in WP.Nos.29166 to 29168 of 2014.]

Prayer in WP.No.29167 of 2014:Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, Calling for the records relating paper publication issued by the 3rd respondent in proceedings Na.Ka. 7247/2007/B1 dated 28.01.2011 in Daily Thanthi Erode Edition on 30.1.2011 and the consequent Proceedings in Na.Ka. 7247/2007/B1 dated 19.9.2014 and the order of the 1st respondent in G.O.(D) No.271 Highways and Minor Ports (HP1) 31.12.2013 which was published in Government Gazette dated 5.2.2014 quash the same in so far as the petitioner land in R.S.No.341/2B Puthur Pudupalayam Village Erode Taluk and District measuring an extent of 03100 sq. meters[Amended as per order dated 20.07.2016 in MP.No.1 of 2015 in WP.Nos.29166 to 29168 of 2014]

Prayer in WP.No.29168 of 2014:Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, Calling for the records relating to the proceedings of the 3rd respondent dated 25.10.2010 in Na.Ka.No. 7247/07/B1 and the subsequent paper publication in proceedings Na.Ka. 7247/2007/B1 dated 28.01.2011 published in Daily Thanthi Erode Edition on 30.1.2011 and the consequent Proceedings in Na.Ka. 7247/2012/B1 dated 3.12.2012 and the order of the 1st respondent in G.O.(D) No.275 Highways and Minor Ports (HP1) 31.12.2013 which was published in Government Gazette dated 5.2.2014 and quash the same in so far as the petitioner land in R.S.No.323/2 Puthur Pudupalayam Village Erode Taluk and District measuring an extent of 03725 sq. meters [Amended as per order dated 20.07.2016 in MP.No.1 of 2015 in WP.Nos.29166 to 29168 of 2014]

For Appellants : Mr.V.Raghavachari

For Respondents : Mr.P.H.Arvinth Pandian
Addl. Advocate General
assisted by
Mr.V.Anandamoorthy
Addl. Government Pleader

COMMON JUDGMENT

The Hon'ble Chief Justice

These three appeals arise out of a common judgment dated 30.8.2019, whereby the learned Single Judge has declined relief to the appellants in relation to land acquisition proceedings under the Tamil Nadu Highways Act, 2001 (for brevity, "the 2001 Act") for the purpose of an Outer Ring Road through Pudur Pudupalayam Village, in Erode "C" Village, Erode, the details of the land are all expressly set out in the impugned judgment of the learned Single Judge and, therefore, need not be reproduced herein under.

2. Encouraging legal arguments, that could have led to a valuable legal discourse before the learned Single Judge, have been strategically advanced seeking remedies against the acquisition.

3. The acquisition proceedings have been challenged by contending that:

- (i) the acquisition has been proposed without notifying the highway boundary as required under Section 8 of the 2001 Act;
- (ii) the manner and mode of enquiry to be conducted and orders to be passed in terms of Section 15 of the 2001 Act has not been followed and there are serious procedural infirmities that can be termed as violation of Section 15(3) of the 2001 Act read with Rule 5 of the Tamil Nadu Highways Rules, 2003 (for brevity, "the 2003 Rules"); and
- (iii) no notices have been served and fair hearing conducted in terms of Section 15(2) of the 2001 Act and the 2003 Rules, referred to above.
- (iv)

4. In addition to the aforesaid three arguments, it has been urged that the authorities who have exercised powers while proceeding to issue the notification under the 2001 Act were not empowered to do so. Learned counsel for the appellants in these appeals has filed an affidavit of Nachimuthu Gounder, the appellant in W.A.No.3859 of 2019, where he has specifically set out that the District Revenue Officer is not the empowered authority for issuing the notice under Section 15(2) of the 2001 Act as on the date when it was issued. The aforesaid affidavit dated 6.3.2020 focuses on the said argument, supplementing it that even no such notification had been published in terms of the Tamil Nadu General Clauses Act, 1891.

5. To the said affidavit, during the course of the hearing of the matter, we had called upon the learned Additional Advocate General, who informed the Court of the aforesaid status of the notifications, and in response thereto a counter affidavit by the third respondent dated 8.9.2020 has been filed along with the relevant documents.

6. Mr.Raghavachari, learned counsel advanced the submissions on behalf of the appellants as noted herein above, and took us through the pleadings and typed set of papers that have been brought on record, together with the pleadings that were before the learned Single Judge.

7. The submissions so raised have been refuted by the learned Additional Advocate General and it is urged that fair opportunity of hearing was given; the objections raised have been considered, and none of the contentions raised either on law or on fact have been substantiated so as to warrant interference and, therefore, the judgment of the learned Single Judge deserves to be upheld. The Division Bench judgment in the case of Veeyel Enterprises and others v. State of Tamil and others, (2015) 5 MLJ 641 has been relied on by the learned Additional Advocate General.

8. Having given our anxious consideration to the submissions raised, we find that this dispute of acquisition came to be labelled initially as a mala fide act on the part of the respondents in order to save the land of a former Minister, about which allegations had been made that this entire realignment of the Outer Ring Road was altered to suit the purposes of the said Minister. We may, at the outset, point out that the learned Single Judge has rejected this argument on the ground that the mala fides could not be established, and on the other hand, the realignment was based on a report of Experts which could not be successfully challenged.

9. We entirely agree with the conclusion drawn by the learned Single Judge, but we may further add that in legal parlance malice in fact and malice in law are two different shades which are generally advocated and advanced in support of allegations of mala fides. In the instant case, the allegation was made as if a former Minister was exercising some clout in order to manipulate and negotiate the alignment of the road, which in turn adversely affected the appellants and directly benefited the said Minister.

10. We have perused the pleadings in the writ petitions as well as the allegations made and we find that such allegations with regard to the fact of any manipulation being made by some Minister have neither been appropriately pleaded nor substantiated by facts. The allegation, whatever worth it is, has come forward in the reply affidavit filed by the petitioner of February, 2015 in W.P.No.29167 of 2014, where it is alleged that the realignment was done to safeguard the interest of a former Minister Mr.N.K.K.P.Raja, who had allegedly purchased lands in the name of his wife. Nothing further has been brought on record so as to believe the said allegations. Secondly, the said former Minister does not appear to have been made a party to the proceedings as is evident from the records of W.P.No.29167 of 2014, as well as in the present appeals. Thus, without even impleading the former Minister by name, against whom such allegations are stated to have been made, the issue of mala fides was rightly set at rest by the learned Single Judge.

11. Coming to the issue of malice in law, the finding recorded by the learned Single Judge that the realignment was caused on account of the report of the Experts has not been refuted or dislodged by any relevant material so as to construe that the power exercised by the authorities to acquire the land of the appellants for the purpose of realignment was actuated by any colourable exercise of power, or a motivated act that may even remotely lead to the conclusion that the principles of malice in law were attracted.

12. Having said so, since the major argument advanced by Mr.Raghavachari as noted above included the issue of non authorization of the officer and the absence of a notification published in the official gazette, we propose to deal with the same at this juncture itself.

13. For this, we have to examine the pleadings that have been brought on record about the existence of a pre-notification; as to whether judicial notice can be taken of any such notification if produced; whether the notification has the force of law having been issued and authorized pursuant to the powers conferred under the relevant law; and last but not the

least, whether such a notification had been published in the gazette or not.

14. We may commence with the provisions that are required to be noticed in this respect under the 2001 Act and the 2003 Rules. The delegation of powers by the Government is provided for under Section 56 of the 2001 Act, which is extracted herein under:

"Section 56. Delegation of powers.-

(1) The Government may, by notification, authorise any authority or officer to exercise any of the powers vested in them by this Act, other than the powers conferred by sections 55, 65 and 66 and may, in like manner, withdraw such authorisation.

(2) The exercise of any power delegated under sub-section (1) shall be subject to such restrictions and conditions as may be specified in the notification and also to control and revision by the Government."

15. The power to be exercised for the purpose of issuance of notification is clearly traceable to Section 15 of the Act, which is extracted herein under:

"Section 15. Power to acquire land.-

(1) If the Government are satisfied that any land is required for the purpose of any highway or for construction of bridges, culverts, causeways or other structures thereon or for any purpose incidental or ancillary thereto, in furtherance of the objects of this Act, they may acquire such land by publishing in the Tamil Nadu Government Gazette a notice specifying the description of such land and the particular purpose for which such land is required.

(2) Before publishing a notice under sub-section (1), the Government shall call upon the owner and any other person having interest in such land to show cause 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.

(3) The Government may, after considering the cause, if any, shown by the owner or other person having interest in such land, pass such an order under sub-section (1), as they may deem fit."

16. This has to be read with Rule 5 of the 2003 Rules, which is extracted herein under:

"Rule 5. Manner of publication of the public notice.-

Before publishing a notice under sub-section (1) of section 15, the Government or the Collector or the Special Deputy Collector (Land Acquisition), Tamil Nadu Urban Development Project III, as the case may be shall in addition to calling upon the owner and any other person having interest in the land to show cause as to why the land should not be acquired, shall also cause a public notice to that effect to be published in one English and in one Tamil newspapers having circulation in the locality. The said notice shall also be displayed in the offices of the,---

- (i) Highways Authority of the division concerned;
- (ii) Village Administrative Officer of the village concerned; and
- (iii) Tahsildar of the taluk concerned.

(2) If any objection is received from a person interested in the land within the time prescribed in the public notice issued under sub-section 2 of section 15, the Government or the Collector or the Special Deputy Collector (Land Acquisition), Tamil Nadu Urban Development Project III, as the case may be, shall fix a date for hearing the objections and give notice thereof to the objector as well as to the Highways Department. Copies of the objection shall also be forwarded to the Highways Department. The Highways Department may file on or before the date fixed by the Government or the Collector as the case may be, a statement by way of answer to the objections and may also depute a representative to attend the enquiry;

(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 representatives, 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;

(4) Where the enquiry is conducted by the Collector, on completion of the enquiry, the Collector shall submit all the details of the enquiry to the Government to pass order under subsection(3) of the section 15;

(5) Where the enquiry is conducted by the Government, the Government will pass order under subsection(3) of section 15."

17. A combined reading of the provisions of Section 15 of the 2001 Act read with Rule 5 of the 2003 Rules would indicate that the State Government has to take appropriate steps in this regard. The definition of the word "Government" is contained in Section 2(11) of the 2001 Act, which is reproduced herein under:

"Section 2 (11) "Government" means the State Government."

18. The word "Collector" is defined under Section 2(5) of the 2001 Act, which is also gainfully extracted herein under:

"Section 2(5) "Collector" means the Collector of a district and includes any officer specifically appointed by the Government to perform the functions of the Collector under this Act."

19. The contention of Mr.Raghavachari is that the District Revenue Officer was not authorized to issue the notice or the proceedings relating to the requirement under Section 15(2) of the 2001 Act and the consequential action under Section 15(3) of the 2001 Act.

20. We may put on record that the counter affidavit of the District Revenue Officer dated 8.9.2020 in W.A.No.3859 of 2019 specifically states that the notification under Section 2(5) of the 2001 Act dated 11.5.2010 was issued appointing the District Revenue Officer of the District to perform the functions of the Collector of the District concerned under the 2001 Act. The said notification is reproduced herein under:

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"ABSTRACT

Tamil Nadu Highways Act, 2001 - Delegation of powers of Collector to District Revenue Officer under Section 2(5) of the Tamil Nadu Highways Act, 2001 - Notification - Issued.

Highways and Minor Ports (HF.1) Department

G.O. (Ms) No.176

Dated 11.5.2010

(Chittirai-28,

Thiruvalluvar Aandu 2041)

From the District Collector, Kancheepuram,
Letter No.Rc.Camp (6) dated: 4.9.2009.

ORDER:

The following Notification will be published in the next issue of the Tamil Nadu Government Gazette.

NOTIFICATION

In exercise of the powers conferred by sub-section (5) of section 2 of the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002), the Governor of Tamil Nadu hereby appoints the District Revenue Officer of a district to perform the functions of Collector of the district concerned under the said Act.

(By order of the Governor)

G.Santhanam

Secretary to Government"

21. A perusal of the said notification leaves no room for doubt that under Section 2(5) of the 2001 Act, the Collector means the Collector of a District and includes any officer specifically appointed by the State Government to perform the functions of the Collector under the 2001 Act. The said notification has been published even prior to the notice issued under Section 15(2) of the 2001 Act on 4.8.2010.

22. The authorization through delegation under Section 15 (2) of the 2001 Act has been notified in the gazette on 22.6.2011 and a copy of the notification published in the gazette has been brought on record, whereby the District Revenue Officer has been delegated the power directly under Section 56 of the 2001 Act. A perusal of Rule 5 of the 2003 Rules that have been framed under Section 66 of the 2001 Act authorizes the sending of a notice to the owner by the Government or the

Collector or the Special Deputy Collector (Land Acquisition) for disposal of the proceedings in relation to Section 15 of the 2001 Act.

23. In our considered opinion, the said issue does not appear to have been raised before the learned Single Judge, but at the same time, the existence of the notification referred to above and its publication in the official gazette has to be taken judicial notice of, and has not been refuted. Secondly, there may have been a discrepancy in the service of notice to one of the petitioners as recorded in paragraph (13) of the impugned judgment. From the typed set of papers filed by the Additional Government Pleader dated 3.3.2020, we also find that notices under Section 15(3) of the 2001 Act had been served to all the three appellants and the statements of the three appellants were recorded on 10.12.2012. The contention that notices were published in an English daily which does not have any wide circulation will not vitiate the proceedings so long as the appellants have been put to notice. Knowledge of the acquisition proceedings, therefore, stands substantiated, and with opportunity to the appellants to respond to the same is also established.

24. It is correct that the order dated 19.9.2014 was passed after the gazette publication on 5.2.2014. This question even if it raises an issue, we leave this open to be dealt with appropriately in some other case for the reason that the present is a case with regard to construction of an Outer Ring Road, which admittedly is a public purpose and further substantial procedural compliances have been observed by the authorities before proceeding to acquire the land.

25. Some judgments have been relied on by the learned counsel for the appellants, including those before the learned Single Judge, to support the submissions, namely:

- (i) Sannarangappa v. State of Karnataka and others, (2017) 12 SCC 797;
- (ii) Ceedeeyes Standard Towers Pvt. Ltd. v. The District Collector of Chennai and others, MANU/TN/2149/2016;
- (iii) Jayaraman v. State of Tamil Nadu, (2014) 4 MLJ 685;
- (iv) R.Kumar and others v. State of Tamil Nadu and others, (2007) 2 MLJ 384;
- (v) K.G.Parthasarathy and others v. The State of Tamil Nadu and others, (2016) 7 MLJ 233;
- (vi) Dev Sharan and others v. State of Uttar Pradesh and others, (2011) 4 SCC 769;

- (vii) Union of India and others v. Shiv Raj and others, (2014) 6 SCC 564;
- (viii) The State of Tamil Nadu and others v. K.S.Narayanan, (2007) 2 MLJ 367;
- (ix) Kunwar Pal Singh (Dead) by LRs v. State of U.P. and others, (2007) 5 SCC 85;
- (x) M.Manoharan and others v. State of Tamil Nadu and others, 2018 SCC OnLine Mad 7258;
- (xi) K.G.Parthasarathy and another v. State of Tamil Nadu and others, 2016 SCC OnLine Mad 9162;
- (xii) Balkis Ammal v. State of Tamil Nadu, 1997 (1) CTC 427;
- (xiii) Mariappan and others v. State of Tamil Nadu and others, 2001 (3) CTC 158;
- (xiv) K.Subbia Gounder and others v. The State of Tamil Nadu and others, 2002 (4) CTC 288;
- (xv) Sharp Tools v. The State of Tamil Nadu and others, 2006 (4) CTC 785;
- (xvi) Kolammal v. State of Tamil Nadu and others, AIR 2007 Mad 258; and
- (xvii) H.D.Simon v. The State of Tamil Nadu and others, (2015) 2 CWC 55.

The said judgments cannot help in finally turning the table in favour of the appellants as we find the ultimate acquisition to be almost irreversible, even though procedural lapses as pointed out by the learned counsel may require further analysis and a deeper authentic approach in law in an appropriate case. There is no substantial failure or miscarriage of justice so as to judicially review the order under appeal and upturn the refusal of discretion. However, the appellants would be entitled to all such benefits that may be available to them in relation to the award of compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and the appellants will have a right to stake their claim accordingly.

In the given circumstances of the case, we therefore find no reason to interfere with the impugned judgment of the learned Single Judge and the appeals are accordingly consigned. No costs. Consequently, C.M.P.Nos.24273 of 2019, 10207 and 10209 of 2020 are closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

1.The Secretary to Government,
State of Tamil Nadu,
Highways Department,
Fort St. George,
Chennai - 600 009.

2.The District Collector,
Erode District.

3.The District Revenue Officer-cum-
Land Acquisition Officer,
Erode.

+3 ccs to M/s.V.Raghavachari Advocate sr42159

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