

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.3.2020

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NO.27285 OF 2017

1.P.Arunkumar

2.P.Rajesh Kumar

3.M/s.P.Ramachandriah Son & Co.,
Chennai-10.

...Petitioners

Vs

1.The Additional Chief Secretary to
Government Highways & Minor Ports
Department Secretariat,
Fort St.George, Chennai-9.

2.The Chief Engineer, Construction &
Maintenance Wing, Highways Department,
Chepauk, Chennai-5.

3.The Chief General Manager (Tech)
& Regional Officer, National Highways
Authority of India, SRI Tower,
3rd Floor, DP- 34 (SP) Industrial
Estate, Guindy, Chennai-32.

4.The Competent Authority & Special
District Revenue Officer, Land
Acquisition, National Highways
Kancheepuram & Thiruvallur District,
Kancheepuram-631501.

5.The Principal Secretary, Government
of Tamil Nadu, Housing & Urban
Development Department, Fort.St.
George, Chennai-9.

6.The Member Secretary, Chennai
Metropolitan Development Authority,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road, Chennai-8.

(R5 & R6 are suo motu impleaded
in this order today)

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in proceedings bearing Letter No.6723/HW2/2017-6 dated 27.9.2017 and the second respondent in proceedings bearing Letter No. 1032/Contracts 2/2017-6 dated 08.9.2017, quash the same and consequently direct the first and second respondents to acquire the land-locked lands measuring 59 sq.mts comprised in T.S.No.2/3 and 535.91 sq.mtrs in T.S.No.41/1, Block 43 of Koyambedu Village, Chennai and pay the legal compensation to the petitioners.

For Petitioners : Mr.V.Suresh for
M/s.Shivakumar
For Respondents 1 to 5 : Mr.M.Elumalai, GA
For Respondent-6 : Mr.P.Ganesh

ORDER

I have heard the learned counsel for the parties.

2. In order to give effective disposal to this writ petition, (i) the Principal Secretary, Government of Tamil Nadu, Housing & Urban Development Department, Fort.St.George, Chennai-9 and (ii) the Member Secretary, Chennai Metropolitan Development Authority, Thalamuthu Natarajan Maligai, No.1, Gandhi Irwin Road, Chennai-8 are suo motu impleaded as respondents 5 and 6.

3. The petitioners are owners of land comprised in T.S.No.2/3 measuring 59 sq.meters and T.S.No.41/1 measuring 535.91 sq.mtrs, Block 43 of Koyambedu Village, Chennai. Apart from that, the petitioners owned a larger extent of land in the same survey number and it was acquired for construction of grade separator at Koyambedu Junction. As of now, the grade separator has been erected and the project has been handed over to the State Highways Department falling under the control of the first respondent.

4. The grievance of the petitioners is that an extent of 24,030 sq.ft., in S.Nos.2/2 and 41, Block No.43, Koyambedu Village, Egmore Nungambakkam Taluk, Chennai was acquired from the petitioners by respondents 1 to 4 for the said project and that after acquisition, an extent of 59 sq.meters in T.S.No.2/3 and an extent of 535.91 sq.meters in T.S.No.41/1, Block 43, Koyambedu Village, Chennai were retained by the petitioners. However, the petitioners were not able to access the property retained, because it has become inaccessible on account of construction of grade separator. Therefore, the petitioners requested the Authorities to acquire the land retained by them because they were unable to utilize the land.

5. Since no action was initiated on the petitioners' request and the National Highways Department had taken a stand that the Koyambedu grade separator was handed over to the State Highways Department and that after completion of the project, any additional requirement of the land or consideration of the request of the petitioners had to be done only by the Highways Department of the State, the petitioners approached this Court by filing W.P.No.6085 of 2017 praying for a direction to respondents 1 to 4 herein to initiate and complete the acquisition proceedings in respect of land-locked area, which was lying beneath the grade separator.

6. The said writ petition was disposed of by order dated 22.6.2017 taking note of the stand taken by the National Highways Department and a direction was issued to respondents 1 and 2 to take a decision on the proposed acquisition of the unutilized lands, which were land locked and which were not put to acquisition proceedings and intimate the same to the petitioners. Pursuant to that, the second respondent, by communication dated 08.9.2017, informed the petitioners that the subject lands were not required for any purpose incidental or ancillary to the grade separator. The first respondent, after referring to the said communication of the second respondent dated 08.9.2017, by order dated 27.9.2017, rejected the petitioners' request on the ground that the lands were not required by the Highways Department for the grade separator slip/service road or for any other purpose incidental or ancillary thereto.

7. In the considered view of this Court, the stand taken by respondents 1 and 2 is highly arbitrary and is an outcome of total non application of mind. It is an admitted fact that the lands are not required for the grade separator slip/service road. However, the plight of the land owners needs to be taken into consideration because the land does not have any access. The denial of access to the petitioner's property is on account of construction of the grade separator. If the petitioners' property is inaccessible, then respondents 1 and 2 should take a pragmatic decision in the matter and the stand taken by them in their respective communications dated 27.9.2017 and 08.9.2017 is not tenable.

8. In the counter affidavit filed on behalf of the second respondent, it is stated that the National Highways handed over the grade separator to the State Highways Department for future maintenance subject to the condition that the ownership of the land vested with the National Highways Authority of India (NHAI) and that no structural alterations should be made. It is further stated that either the State Government or the first respondent or the second respondent could not take any decision, as they

had no power or rights to go for structural alterations. There is also a reference to the communication sent by the NHAI dated 04.4.2014 to the Secretary to Government of Tamil Nadu, Housing and Urban Development Department and the Member Secretary, Chennai Metropolitan Development Authority to accord necessary permission to the petitioners to have access to their land from the slip road and for construction of structure by the land owners in the left out land duly relaxing the set back rules for granting planning permission so as to mitigate the hardship being faced by them to some extent.

9. Though, in the counter affidavit filed on behalf of the second respondent, there is a reference to the said communication, nothing worthwhile appears to have been done either by the Secretary to Government of Tamil Nadu, Housing and Urban Development Department or by the Member Secretary, Chennai Metropolitan Development Authority. Thus, from the counter affidavit filed on behalf of the second respondent, it is clear that the Competent Authority namely the NHAI recommended the petitioners' case to respondents 5 and 6 by communication dated 04.4.2014 and it is not clear as to why respondents 5 and 6 have not taken any action in this regard. When the Authority, which has implemented the project namely the NHAI recommended the petitioners' case, it goes without saying that respondents 5 and 6 should consider the same in proper perspective.

10. In the light of the above, the writ petition is allowed, the impugned orders are set aside and the matter is remanded to the consideration of respondents 5 and 6. The sixth respondent is directed to take note of the recommendations of the NHAI in its proceedings in NHAI/11018/1/09/RO, Chennai/1254 dated 04.4.2014 addressed to the fifth respondent and make appropriate proposal to the fifth respondent so as to enable the fifth respondent to take a conscious decision in the matter. Before taking a decision, the fifth respondent shall call for a report on the site inspection, which shall be conducted after notice to the petitioners. In the event the fifth respondent is of the opinion that forming of a slip road is not feasible, then appropriate steps shall be taken for acquisition of the lands in question by the appropriate Authority either by resorting to proceedings under the Act 30 of 2013 or by entering into private negotiations with the petitioners. The above directions shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS

To

- 1.The Additional Chief Secretary to Government
Highways & Minor Ports
Department Secretariat, Fort St.George, Chennai-9.
 - 2.The Chief Engineer, Construction & Maintenance Wing, Highways
Department, Chepauk, Chennai-5.
 - 3.The Chief General Manager (Tech) & Regional Officer,
National Highways
Authority of India, SRI Tower, 3rd Floor,
DP- 34 (SP) Industrial Estate,
Guindy, Chennai-32.
 - 4.The Competent Authority & Special District Revenue Officer,
Land Acquisition, National Highways,
Kancheepuram & Thiruvallur District,
Kancheepuram-631501.
 - 5.The Principal Secretary, Government of Tamil Nadu,
Housing & Urban
Development Department, Fort.St.George, Chennai-9.
 - 6.The Member Secretary, Chennai Metropolitan
Development Authority,
Thalamuthu Natarajan Maligai, No.1,
Gandhi Irwin Road, Chennai-8.
- +1cc to M/S.Shivakumar & Suresh, Advocate, S.R.No.18651
+1cc to the Government Pleader, S.R.No.19231

WP.No.27285 of 2017

SV(CO)
KKV/13/08/2020

सत्यमेव जयते

WEB COPY