



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **12.10.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **S. VAIDYANATHAN**

W.P(MD)No.14149 of 2020

and

W.M.P. (MD) No.11795 of 2020

WEB COPY

Geetha

...Petitioner

Vs.

- 1.The Chairman,
National Highways Authority of India (NHAI),
G-5 & 6, Sector-10, Dwarka,
New Delhi - 110 075.
- 2.The District Collector,
Tuticorin,
Tuticorin District.
- 3.The Special Officer/Revenue Division Officer (Land Acquisition),
45B, National Highway,
Virudhunagar District.
- 4.The Special Tahsildar (Land Acquisition),
45B, National Highway,
Tuticorin District.
- 5.Project Director,
PIU National Highways Authority of India,
Plot No.112, Rahmath Nagar,
Near Dr.Poovalingam House Post Tirunelveli,
Tuticorin Road,
Palayamkottai,
Tirunelveli - 627 011.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondents 1 to 4 to provide with pathway to access land in S.No.52/1A1 and 53/7A2 in Putur Pandiapuram Village, Ottabhitaram Taluk, Thoothukudi District through the unutilised land in S.No.53/7B2 in Putur Pandiyapuram Village, Ottabhitaram Taluk, Thoothukudi District or any other land to access the petitioner's land within the stipulated time.

For Petitioner
For Respondents
1 to 4

For Respondent 5

: Mr.T.Lajapathi Roy
: Mr.Sricharan Rengarajan
Additional Advocate General
assisted by Mr.K.P.Krishnadoss,
Special Government Pleader
: Mr.Su.Srinivasan,
Central Government Standing Counsel



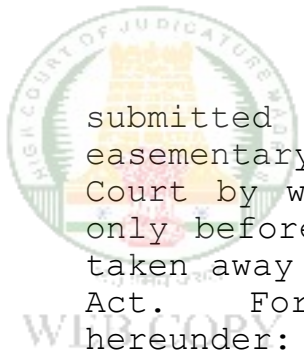
ORDER

This Writ Petition is filed seeking issuance of a Writ of Mandamus to direct the respondents 1 to 4 to provide pathway to access land in S.Nos.52/1A1 and 53/7A2 in Putur Pandiapuram Village, Ottabhitaram Taluk, Thoothukudi District through the unutilised land in S.No.53/7B2 in Putur Pandiyapuram Village, Ottabhitaram Taluk, Thoothukudi District or any other land to access the petitioner's land within the stipulated time.

2.Heard the learned Counsel appearing for the petitioner, Mr.M.Sricharan Rangarajan, learned Additional Advocate General assisted by Mr.K.P.Krishnadoss, learned Special Government Pleader appearing for the respondents 1 to 4 and Mr.Su.Srinivasan, learned Central Government Standing Counsel appearing for the fifth respondent. By consent of all the parties, the Writ Petition is disposed of at the admission stage itself.

3.The learned counsel appearing for the petitioner would submit that the properties in Survey Nos.52/1A1, 53/7A2 and 53/7B2 measuring to an extent of 46.0 ares in Putur Pandiyapuram Village, Ottabhitaram Taluk, Thoothukudi District were initially stood in the name of the petitioner's husband and thereafter, it was transferred to the name of the petitioner and her daughter and they have been in possession and enjoyment of the said properties. While so, on 22.09.2006, the third respondent issued an executive order to acquire the lands for extension of four way lane for National Highways 45B (Madurai-Aruppukottai-Thoothukudi highways) and in which, the petitioner's land in Survey No.53/7B2 was notified to be acquired and subsequently, it was acquired by the fourth respondent. It is further submitted that after acquisition, on 31.05.2010, the fourth respondent issued a notice calling upon the petitioner to collect the compensation for the acquired land, however, the petitioner could not get the same till date. Further, the acquired land is not utilised for the purpose for which it was acquired. It is also submitted that the petitioner has no access to her remaining lands in Survey Nos.52/1A1 and 53/7A2 except the land acquired viz., the land in Survey No.53/7B2. Therefore, on 25.02.2019, the petitioner made a representation to the respondents 2 to 4 to provide pathway to access her land in Survey Nos.52/1A1 and 53/7A2 in Putur Pandiyapuram Village, Ottabhitaram Taluk, Thoothukudi District through the unutilised land in Survey No.53/7B2. Since the representation of the petitioner has not been considered by the respondents 2 to 4, the petitioner has come forward with the present Writ Petition.

4.At the time of admission, Mr.M.Sricharan Rangarajan, learned Additional Advocate General appearing for the respondents 1 to 4 would submit that the Writ Petition is not maintainable in law in view of Section 3(G)(6) of the National Highways Act. He further



submitted that in terms of the said Act, when there is an easementary right, the petitioner has no right to approach this Court by way of Writ Petition and she has to work out her remedy only before the Arbitrator and the purview of any of the Court is taken away by Sub-Section 6 of Section 3(G) of the National Highways Act. For the sake of convenience, Section 3-G is extracted hereunder:

"3-G. Determination of amount payable as compensation.-(1)

Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

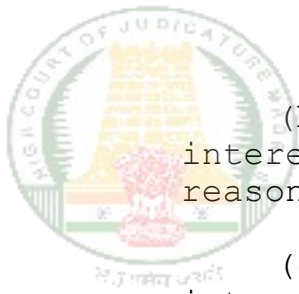
(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration-

(a) the market value of the land on the date of

<https://hcservices.ecourts.gov.in/hcservices/> of the notification under section 3A;



(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change."

5.Mr.Su.Srinivasan, learned Central Government Standing Counsel appearing for the fifth respondent would submit that the petitioner has no *locus standi* to seek any relief before this Court in view of Sub-Section 6 of Section 3(G) of the National Highways Act.

6.Considering the fact that as there is a bar for this Court to entertain the matter, more so, the petitioner has remedy before the Arbitrator who can decide the issue in question, including the right of pathway, this Court is of the view that the Writ Petition is liable to be dismissed *in limine*. Accordingly, this Writ Petition is dismissed. However, it is needless to mention that the petitioner can work out her remedy in accordance with law. It is made clear that any finding touching the merits of the matter in this Writ Petition will not affect the rights of the parties, in case, any alternative remedy is availed by the writ petitioner. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

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/ /2020

Sub Assistant Registrar(CS)

SRM

To

1.The Chairman,
National Highways Authority of India (NHAI),
G-5 & 6, Sector-10, Dwarka,
New Delhi - 110 075.



2.The District Collector,
Tuticorin,
Tuticorin District.

3.The Special Officer/Revenue Division Officer (Land Acquisition),
45B, National Highway,
Virudhunagar District.

4.The Special Tahsildar (Land Acquisition),
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5.The Project Director,
PIU National Highways Authority of India,
Plot No.112, Rahmath Nagar,
Near Dr.Poovalingam House Post Tirunelveli,
Tuticorin Road,
Palayamkottai,
Tirunelveli - 627 011.

+1 CC to M/s.SU.SRINIVASAN, Advocate (SR-19841[F] dated 13/10/2020

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-19925[F] dated
13/10/2020)

W.P. (MD) No.14149 of 2020
12.10.2020

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KB(09.11.2020) 5P 8C