



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2020

CORAM :

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

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.(MD) No.151 of 2016

and C.M.P.(MD) No.691 of 2016

WEB COPY

Sarojini Ammal Educational Trust
rep. by its Managing Trustee
(Sri Vedha Anglo Indian
Matriculation School)
S.Thirugnanasambandan
No.27, 1st Nizam Colony
Pudukottai Post
Pudukottai District.

.. Appellant / Petitioner

Vs

- 1 Union of India
rep. by the Secretary to Government
Ministry of Shipping, Road Transport
and Highways, Department of Road
Transport and Highways
New Delhi.
- 2 The Project Director
National Highway Authority of India
Karaikudi.
- 3 The Competent Authority-cum-
Special District Revenue Officer
(Land Acquisition, National Highway)
Pudukottai, Pudukottai District.
- 4 The State Industries Promotion
Corporation of Tamilnadu Ltd.
(SIPCOT), rep. by Project Officer
SIPCOT Project Officer
Pudukottai.
- 5 The Commissioner
Directorate of Town and
Country Planning
No.807, Anna Salai
Chennai - 600 002.

.. Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent against the order dated 8.1.2016 passed in W.P. (MD) No.4264 of 2015 by the learned Single Judge.



Prayer in WP(MD)No.4264/2015

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the Impugned notification issued by the 2nd respondent published in the Gazette of India(Extraordinary) in part-II Section 3-Sub Section (ii) dated 13.05.2014 in S.O.1267/E in respect of the landed property in survey No.34/1 (part) to an extent of 8478 sq.mt. 34/2 (part) to an extent of 965 sq.mt, 35/1 (part) to an extent of 480 (part) sq.mt. 35/2 (part) to extent of 3080 sq. mt. 35/3 (part) to an extent of 432 sq.mt 35/4 (part) to an extent extent of 281 sq.mt. 35/5 (part) to an extent of 5109 sq.mt situated at Natham pannai, Pudukottai Taluk, Pudukottai District and the consequential impugned orders passed by the 3rd respondent in his proceedings Na.Ka.No.35966/2013 (National Highways) B7 dated 09.07.2014 and the consequential impugned notification issued by the second respondent in S.O.2703(E) dated 20.10.2014 in respect of the above mentioned landed property and quash the same as illegal and in violation of the provision of National Highways Act 1956 and the Tamilnadu Town and Country Planning Act 1971 and in violation of principles of natural justice

For Appellant : Mr.B.Saravanan

For respondents : Mr.S.Jeyasingh
for 1st respondent

Mr.R.Rajagobal
for 2nd respondent

Mr.VR.Shanmuganathan
Special Government Pleader
for respondents 3 and 5

Mr.Adithya Vijayalayan
for 4th respondent

JUDGMENT

(Delivered by *SUBRAMONIUM PRASAD, J.*)

The appeal assails the judgment dated 8.1.2016 passed in W.P. (MD) No.4264 of 2015, whereby the learned Single Judge has dismissed the writ petition filed by the appellant/writ petitioner seeking issuance of a writ of certiorari to quash the notification issued by the Project Director, National Highway Authority of India under Section 3A(1) of the National Highways Act, 1956 (for brevity, "the NHA Act, 1956") for acquiring the land of the appellant/writ petitioner and to quash all further notifications issued in



connection therewith.

2. The appellant/writ petitioner is a lessee of a plot of land leased to it for 99 years by the fourth respondent, namely, the State Industries Promotion Corporation of Tamilnadu Ltd. (SIPCOT), for the purpose of establishing a school and playground. It is stated that this particular land had been earmarked for the said purpose in the development plan. It is claimed that the appellant/writ petitioner initiated a huge investment for the construction of the school and playground to cater to the people of the locality. The second respondent issued a notification on 13.5.2014 intending to acquire the land for the construction of a public highway exercising its power conferred under Section 3A(1) of the NHA Act, 1956. The appellant states that objections were filed, but the same was not considered. It is this notification which was challenged in the writ petition giving rise to this appeal.

3. The principal contention of the appellant/writ petitioner is that the land has been earmarked in the development plan for the purpose of a school. He would state that the Tamil Nadu Town and Country Planning Act, 1971 (for brevity, "the T&P Act, 1971") was enacted to provide for planning the development and use of rural and urban land in the State of Tamil Nadu and for purposes connected therewith. He would contend that once a development plan has been formulated by the authority, and if the lands have been earmarked for a particular purpose, then that purpose can be varied or revoked only by following the procedure laid down under the T&P Act, 1971. He would state that the respondent/National Highway Authority of India cannot exercise the power of eminent domain by issuing a notification without the development plan being varied, as approved by the planning authorities. He would state that the requirements of Section 33 of the T&P Act, 1971 have been given a complete go-by. The appellant/writ petitioner in these circumstances prayed that the notification issued under Section 3 of the NHA Act, 1956 which has been issued by the National Highway Authority and the consequential order are contrary to law and should be quashed.

4. Counters were filed by the respondents. The competent authority and Special District Revenue Officer, Pudukkottai, which is a State Government authority nominated for the purposes of acquiring land for the highways, has filed a detailed counter. Paragraph (19) of the counter affidavit, which is relevant for this purpose, reads as under:

"19. It is submitted that the Bypass road for Pudukkottai Town has been proposed considering the deep rise in the traffic congestion within the town limit with NH Thanjavur-Pudukkottai section of NH in Mullur village and merges at Km./ Trichy-Karaikudi section



near SIPCOT, Pudukottai. So also the State Government has proposed on Semi Circular road which starts at Km.44/460 of NH 226 Thanjavur - Pudukottai section near Ichadi Chatram village and merges with NH 210 near Namanasamudram village at Km.57/400. The Bypass proposed by the NHAI is on the Right Hand Side and the Bypass proposed by the State Government Highways Department is on the Left Hand Side. If the said Bypasses are constructed a proper Ring Road would be available for Pudukottai Town which ultimately reduces the traffic congestion within the Pudukottai Urban limit. The Southern Railway has also accorded approval for the GAD (General Arrangements Drawing) for the ROB (Railw Over Bridge) proposed in this Bypass road. After completing all requisite formalities the Land Acquisition process has been started and published the notification u/s 3A(1) & 3D(1) of the National Highways Act, 1956 vide S.O.No.1267(E) in Gazette of India No.1051 dated:13.05.2014 and S.O.No.2703(E) in Gazette of India No.2154 dated:20.10.2014 respectively. The objection of the petitioner has also been duly considered and disallowed by the 3rd respondent within the provisions contained u/s 3C(2) of the said Act. There is no illegality in applying the provisions of the National Highways Act,1956 in the matter of acquisition of additional land required for the project. The petitioner must be alive the reality that the Bypass road connectivity is vital to Pudukottai Town which has been considered based on the enormous increase in the vehicular population and to minimize the fatal accidents besides property loss owing to road accidents. The National interest will also be stalled if projects this nature are blocked. Any obstruction in the contruction work at this later stage has its impact on the overall project which ultimately sustain huge financial loss to the Central Government owing to Contractual Claims. Further obstruction if any caused by way of staying the operation of the notification dated 13.05.2014 & 20.10.2014 the work and as a consequential effect improvement and augmentation of the section of National Highway No.226 will be implied. For the foregoing reasons the project could be allowed and theHon'ble Court may be pleased to consider the foregoing averments dismiss the Writ Petition and pass such further or other orders as this Hon'ble Court may deem fit and proper. The Respondent reserves his rights to file additional counter wherever necessary."



5. The learned Single Judge held that the T&P Act, 1971 and the NHA Act, 1956 operate in two different fields and do not deal with the same subject matter. The learned Single Judge, therefore, held that there is no legal impediment on the powers of the National Highways Authority of India to acquire land even for those areas where development plans have been made. The learned Single Judge rejected the argument of inconsistency or repugnancy as pleaded by the appellant/writ petitioner and ultimately dismissed the writ petition. The lessee-educational trust seeks to challenge the order passed by the learned Single Judge.

6. Mr.B.Saravanan, learned counsel appearing for the lease holder would place reliance on Section 33 of the T&P Act, 1971 to contend that a development plan can be only varied by a subsequent plan and that since the land which has been leased out to the appellant trust has been earmarked for the purpose of a school and playground, the same cannot be altered or varied without following the procedure under Section 33 of the T&P Act, 1971. Section 33 of the T&P Act, 1971 is reproduced herein under:

"Section 33. Variation and revocation of detailed development plan.-

(1) A detailed development plan approved under section 29 may, at any time, be varied or revoked by a subsequent plan prepared and approved under this Act.

(2) The provisions of sections 27, 29 and 31 with such modifications as may be necessary shall apply to such subsequent plan referred to under sub-section (1).

(3) The Government may, at any time, by notification in the Tamil Nadu Government Gazette, vary or revoke the detailed development plan prepared and approved under this Act."

7. The appellant is a lessee which has got the land on lease from the fourth respondent, State Industries Promotion Corporation of Tamilnadu Ltd. (SIPCOT). The lease has been given for the purpose of establishment of a school and playground for a period of 99 years. The T&P Act, 1971 was enacted to provide for planning and development and use of rural and urban land in the State of Tamil Nadu and for purposes connected therewith. The purpose of bringing out the T&P Act, 1971 is to ensure a planned development of rural and urban lands in the State of Tamil Nadu. Under the T&P Act, 1971, the Planning Authorities have been constituted, who make development plans for ensuring a proper and planned development of cities, municipalities, etc.

8. The Parliament under Entry 23 of the Union List has exclusive power of legislation to declare Highways as National



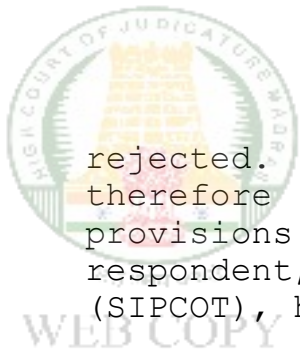
Highways. The NHA Act, 1956 has been enacted for construction, development and maintenance of highways. The NHA Act, 1956 also gives power to the Central Government to acquire lands for construction of highways. The said power is the authority of eminent domain which can be exercised for an acquisition of land.

9. On a comparison of the scheme of the T&P Act, 1971 and the NHA Act, 1956, it would be apparent that the former is an Act for ensuring the laying out of plans for an appropriate development so that it may conform to the standards of modern planning of urbanization. The T&P Act, 1971 nowhere creates any restriction on the acquisition of land, for which a plan has been prepared under the provisions of the said Act. The authority to acquire land, therefore, is not subservient to the T&P Act, 1971, so as to eclipse the eminent domain of the Central Government or the National Highway Authority of India to acquire land for the purpose of constructing highways. An allotment under a scheme for planned development, that too even on a lease where the sovereignty of the land continues with the lessor, does not crystallize into a vested right to continue to possess the land. On acquisition, a proper compensation can always be awarded to the lawful recipient.

10. A perusal of the two Acts would, therefore, show that they operate in entirely different fields. As indicated above, the former does not trench upon or take away the authority of acquisition as envisaged under the NHA Act, 1956. There is, therefore, no conflict between the State Act and the Central Act as they operate in different fields.

11. The contention of the learned counsel for the appellant/writ petitioner that for laying down any highway, the development plan of the area has to be altered, therefore, cannot be accepted. The acquisition under the NHA Act, 1956 is independent of any planning under the T&P Act, 1971. It is a subsequent requirement for a larger public purpose, which is necessary for construction of a highway bypass in the shape of a proper ring road that would ultimately reduce traffic congestion within the urban limits of the vicinity. The acquisition is not dependent on alteration of the plan and the land is acquired free from all encumbrances. A perusal of the relevant portion of the paragraph extracted above would show that there has been a proper application of mind by the authorities before fixing the alignment for the national highway. It cannot be stated that the proposal to acquire land for the highway has been done only on the basis of a unilateral decision of the National Highways Authority without their being any consultation with the State Government in this regard.

12. As stated, the appellant/writ petitioner is only a lessee. He has raised his objections, which have been considered and



rejected. The appellant, who only had a lease of vacant land, can therefore at best claim for compensation in accordance with the provisions of the NHA Act, 1956. The lessor, being the fourth respondent, State Industries Promotion Corporation of Tamilnadu Ltd. (SIPCOT), has not objected to the acquisition of land.

13. As stated earlier, there is nothing in the T&P Act, 1971 which would indicate that the State Government or the Central Government, cannot exercise their power of eminent domain vested in them under various enactments which provide for acquisition of land without getting clearance from the Planning authorities. Since there is no restriction under the Act which restricts the power of the State Government or the Central Government to acquire land for a public purpose and in view of the fact that the highways is being laid after consultation with the State Government and in order to ensure smooth flow of traffic. We do not see any merit in the objection raised by the appellant.

14. It is also submitted by the learned counsel for the State Government that the land has already been put to use, inasmuch as the land stands acquired and the highway has already been laid and, therefore, now it is not possible to return the land to the lessee.

In view of the above, we find no merit in the appeal and the same is rejected. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Sasi/RSB

To:

- 1 The Secretary to Government
Union of India
Ministry of Shipping, Road Transport
and Highways, Department of Road
Transport and Highways
New Delhi.
- 2 The Project Director
National Highway Authority of India
Karaikudi.



3. The Competent Authority-cum-
Special District Revenue Officer
(Land Acquisition, National Highway)
Pudukottai, Pudukottai District.
- 4 The State Industries Promotion
Corporation of Tamilnadu Ltd.
(SIPCOT), rep. by Project Officer
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- 5 The Commissioner
Directorate of Town and
Country Planning
No.807, Anna Salai
Chennai - 600 002.

+1 CC to M/s.N.ATHITHYAVIJAYALAYAN, Advocate (SR-8752[F]
+2 CC to M/s.R.RAJAGOPAL, Advocate (SR-8288[F] dated 26/02/2020)
+1 CC to M/s.B.SARAVANAN, Advocate (SR-8325[F] dated 26/02/2020)
+1 CC to M/s.S.JEYASINGH, Advocate (SR-8927[F] dated 27/02/2020)

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SMA/05/03/2020/8P/11C