



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 24.06.2020

DELIVERED ON: 30.06.2020

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

and

THE HON'BLE MR. JUSTICE B. PUGALENDHI

W.P. (MD) Nos.14750/2018 & W.M.P. (MD) Nos.13291 & 13292/2018

W.P. (MD) No.9834/2019 & W.M.P. (MD) Nos.7728/2019, 5584 & 6170/2020

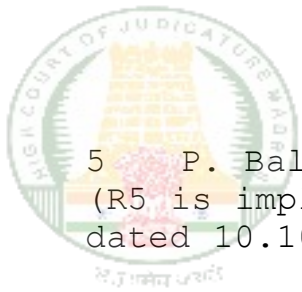
W.P. (MD) No.14750 of 2018:

Pennyquik Irupoga Paasanam Vivasayigal
Neer Aatharangal Paathukapu Sangam
(No.97/2018) through its President
K. Swaminathan
S/o Karuppanan Moopananar
having office at
5-5-941-3 Theeran Chinnamalai Street
Kalaivanar Nagar
Alanganallur
Madurai District

Petitioner

vs.

- 1 The Authorised Officer
(Land Acquisition - NH)
District Revenue Officer
Madurai
- 2 The Project Officer
National Highway Commission
Soorya Tower II Floor
K.K. Nagar, Madurai
- 3 The Chief Engineer
Periyar - Vaigai Irrigation
Tallakulam
Madurai
- 4 The District Collector
Madurai District
Madurai



5 P. Balasubramanian
(R5 is impleaded vide court order
dated 10.10.2018 in WMP(MD) .No.18636/2018)

Respondents

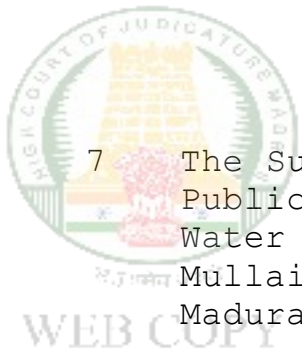
W.P. (MD) No.9834 of 2019:

A.M.M. Ambbigapathy

Petitioner

vs.

- 1 The Government of India
represented by the Secretary
Ministry of Road Transport and Highways
Transport Bhavan
No.1, Parliament Street
New Delhi 110 001
- 2 The Government of India
represented by the Director
Impact Assessment Division
Ministry of Environment, Forest and Climate Change
Indhira Parayavaran Bhavan
III Floor, Vayu Wing
Jorbagh Road
Aliganj, New Delhi 110 003
- 3 The National Highway Authority of India
G 5 & 6, Sector 10
Dwarka
New Delhi 110 075
- 4 The Project Officer
National Highway Commission
Surya Tower - II Floor
K.K. Nagar
Madurai
- 5 The District Collector
Madurai District
Madurai
- 6 The Competent Authority-cum-
District Revenue Officer
Land Acquisition (NH)
Madurai District



7 The Superintending Engineer
Public Works Department
Water Resources Organisation
Mullai Periyar Basin Circle
Madurai

Respondents

Prayer in W.P. (MD) No.14750 of 2018:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records relating to the proceedings pursuant to the impugned notification in S.O. 1679(E), Ministry of Road Transport and Highways dated 17.04.2018 and published in Gazette of India dated 19.04.2018 and the impugned notification in Na.Ka.No.8861/2018, Ministry of Road Transport and Highways dated 26.06.2018 and published in the newspaper dated 27.06.2018 on the file of the first respondent and quash the same and further directing the respondents to re-align the proposed Madurai Ring Road Phase-I through the northern side of Periyar Main Channel.

Prayer in W.P. (MD) No.9834 of 2019:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the impugned notification of the first respondent in S.O.1679 (E) dated 17.04.2018 and published in Gazette of India dated 19.04.2018 and all the consequential proceedings of the respondents 1 to 6 and quash the same as illegal.

For petitioner in :Mr. G. Prabhu Rajadurai
W.P.(MD) No.14750 of 2018

For petitioner in :Mr. AR.L. Sundaresan, Sr. Counsel
W.P. (MD) No.9834 of 2019 for M/s. M. Purushothaman & Kannan

For R2 in :Mr. G. Rajagopalan,
W.P.(MD) No.14750 of 2018 Addl. Sol. General
For RR 3 & 4 in
W.P. (MD) No.9834 of 2019 for Mr. C. Arul Vadivel @ Sekar,
Counsel for NHAI



For RR 1 & 2 in
W.P. (MD) No.9834 of 2019

:Mr. V. Kathirvelu,
Asst. Sol. General
for Mr. S. Jeyasingh
Central Govt. Standing Counsel

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For R5 in
W.P. (MD) No.14750 of 2018

:Mr. T. Lajapathy Roy

For RR 1, 3 & 4 in
W.P. (MD) No.14750 of 2018
and
For RR 5 - 7 in
W.P. (MD) No.9834 of 2019

:Mr. R. Sethuraman
Special Government Pleader

COMMON ORDER

(made by P.N. PRAKASH, J.)

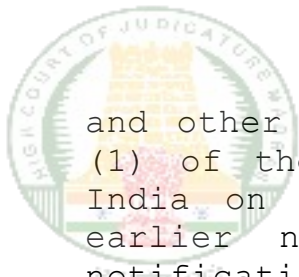
While W.P. (MD) No.14750 of 2018 has been preferred challenging the notification in S.O. 1679 (E), Ministry of Road Transport and Highways dated 17.04.2018 and published in Gazette of India dated 19.04.2018 and also the impugned notification in Na.Ka.No.8861/2018, Ministry of Road Transport and Highways dated 26.06.2018 and published in the newspaper dated 27.06.2018 and for a direction to the respondents to re-align the proposed Madurai Ring Road, Phase I, through the northern side of Periyar Main Channel, challenge in W.P. (MD) No.9834 of 2019 is also to the very same notification dated 17.04.2018 and the gazette publication dated 19.04.2018, besides all the consequential proceedings of the respondents 1 to 6.

2 In view of commonality of the relief sought in these writ petitions, they are considered and decided by this common order.

3 The facts in brief are as under:

3.1 The Central Government floated a proposal to construct an Outer Ring Road / By-pass Road on the eastern side of Madurai under the Bharatmala Pariyojana Scheme and issued a notification dated 19.04.2018 (for brevity "the impugned notification") under Section 3-A(1) of the National Highways Act, 1956, (for brevity "the NH Act"), proposing to acquire the lands mentioned therein.

3.2 The aforesaid notification was published in the newspapers under Section 3-A(3) of the NH Act, on 29.04.2018 and an enquiry under Section 3-C(2) of the NH Act, was conducted by the District Revenue Officer (LANH) 744A, on 22.05.2018



and other dates. Subsequently, a notification under Section 3-D (1) of the NH Act in S.O.2193 was published in the Gazette of India on 14.06.2018. Since certain lands were left out in the earlier notification, the Government published an additional notification dated 22.06.2018 under Section 3-A(1) of the NH Act, which was published in the newspapers on 27.06.2018 in terms of Section 3-D(1) of the NH Act.

3.3 While so, nine persons, including Swaminathan and Ambbigapathy (petitioner in W.P.(MD) No.9834 of 2019), formed an association by name *Pennyquik Irupoga Paasanam Vivasayigal Neer Aatharangal Paathukappu Sangam* under the Tamil Nadu Societies Registration Act and had it registered on 27.06.2018.

3.4 Challenging the impugned notification, the said association filed W.P. (MD) No.14750 of 2018 as a public interest litigation on 06.07.2018 and also filed W.M.P. (MD) No.13292 of 2018 seeking stay of the impugned notification, which was not granted by this Court.

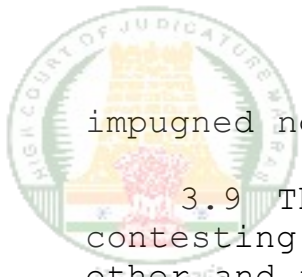
3.5 During the pendency of the aforesaid writ petition, individual land owners numbering around six, filed four writ petitions challenging the acquisition of their lands under the same notification and those writ petitions were posted before a learned Single Judge as per the roster. The details of the the four writ petitions are as under:

W.P (MD) Nos.	Name of the petitioner(s)	Date of presentation of W.P.
19548 of 2018	Chellapandian	07.09.2018
21961 of 2018	Chellapandian	25.10.2018
21273 of 2018	Manimaran Poongathai Ramesh Kumar	08.10.2018
22483 of 2018	Muniasamy	01.11.2018

3.6 On 09.04.2019, the Special District Revenue Officer, Madurai, passed award in respect of the land acquisition proceedings and also additional award on 16.04.2019.

3.7 Pertinent it is to point out at this juncture that the lands of Ambbigapathy's wife Chandra and his mother-in-law Pappathi Ammal in Survey Nos.36/10B and 36/11B in Gavundampatty Village were acquired and the award was passed on 22.04.2019.

3.8 Ambbigapathy is the Hereditary Trustee of a temple in the village, which owns the land in Survey No.109 measuring 9,150 sq. mtrs. out of which, 5,904 sq. mtrs. of land was acquired vide the



impugned notification.

3.9 The H.R. & C.E. Department and Ambbigapathy are contesting to receive the award amount to the exclusion of the other and that dispute is pending.

3.10 While so, suppressing all these facts, Ambbigapathy filed W.P. (MD) No.9834 of 2019 on 23.04.2019 as a public interest litigation, challenging the impugned notification. He did not reveal the interest his family members had in the impugned acquisition. Likewise, he also did not reveal his interest in the temple land which was under acquisition nor did he disclose the filing of the earlier writ petition in W.P. (MD) No.14750 of 2018 by the association in which he was a Member of the Executive Committee.

3.11 When W.P. (MD) No.9834 of 2019 came up for admission on 24.04.2019, this Court ordered status quo as obtaining on that day. The N.H.A.I. filed a Vacate Stay Petition in W.M.P. (MD) No.9992 of 2019 for vacating the status quo order dated 24.04.2019 passed in W.P. (MD) No.9834 of 2019, in which, the N.H.A.I. brought to light the aforesaid suppressions.

3.12 In response, it was contended on behalf of Ambbigapathy that it was only due to sheer inadvertence that certain facts were not brought to the notice of the Court. However, a Division Bench of this Court, by order dated 08.07.2019, vacated the order of status quo granted on 24.04.2019, observing as under:

"It is a well settled position of law that a person, who approaches the Court with unclean hands, is not entitled to equity of this Court. This Court has also taken note of the submission that Section 3-A(3) enquiry pertains only to some other land and not the land belonging to the writ petitioner or his wife or the land belonging to the temple, in which the writ petition claims to be the Executive Member. Though an explanation has been offered by the learned counsel appearing for the writ petition that non statement of the said fact is only an inadvertent mistake, in the considered opinion of this Court, it is a vital material and but for the non disclosure, the earlier Division Bench of this Court would not have granted the interim order."

3.13 After the change of roster, Ambbigapathy filed a fresh application in W.M.P. (MD) No.5584 of 2020 in W.P. (MD) No.9834 of 2019 seeking an order of interim injunction forbearing the respondents from acting upon the impugned notification, wherein, he has also sought apology for not revealing the aforesaid facts in the main affidavit accompanying the writ petition.



3.14 When this matter came up before a Division Bench on 04.06.2020, once again, an order of status quo was passed, albeit the fact that the said Division Bench was made aware of the fact that an earlier Division Bench has vacated the status quo order dated 24.04.2019 vide order dated 08.07.2019.

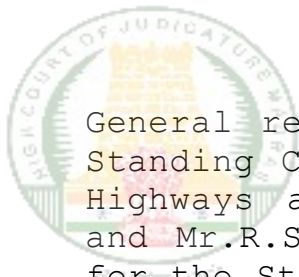
3.15 In our considered view, after the status quo order dated 24.04.2019 was vacated on 08.07.2019 by rejecting the explanation offered by him, Ambbigapathy must have taken recourse to approaching the Supreme Court or in the alternative, should have filed a review application before the same Division Bench for reviewing the order dated 08.07.2019, neither of which was done. This, in our opinion, is tantamount to nothing but forum shopping, which should not be countenanced.

3.16 Now, as regards the four writ petitions, viz., W.P. (MD) No.19548 of 2018, W.P. (MD) No.21961 of 2018, W.P. (MD) No.21273 of 2018 and W.P. (MD) No.22483 of 2018 preferred by the individual land owners calling into question the correctness of the acquisition proceedings in respect of their lands, which were pending, they were dismissed by a learned Single Judge of this Court on 05.02.2019, 04.12.2019, 08.04.2019 and 08.04.2019 respectively and the acquisition was upheld.

3.17 The above being the background, when this matter came up for hearing before us on 19.06.2020, the learned counsel for the petitioners sought adjournment, which was opposed by the respondents vehemently as it is their categorical stand that the project had already begun and on account of the status quo order passed by this Court, they were not able to proceed further.

3.18 Mr. G. Rajagopalan, learned Additional Solicitor General submitted that the pleadings are complete in the case and there is no justification for grant of adjournment. Despite that, we showed indulgence to the learned counsel on record for the petitioner in W.P. (MD) No.9834 of 2019, inasmuch as he wanted to engage a Senior Counsel in the said public interest litigation for final disposal and therefore, we posted the matter to 24.06.2020. Even on 24.06.2020, adjournment was sought, but, we firmly and politely did not accede to the request for adjournment.

4 Heard Mr. G. Prabhu Rajadurai, learned counsel for the petitioner in W.P.(MD) No.14750 of 2018, Mr. AR.L. Sundaresan, learned Senior Counsel representing M/s. M. Purushothaman and M. Kannan, learned counsel on record for the petitioner in W.P.(MD) No.9834 of 2019, Mr. G. Rajagopalan, learned Additional Solicitor General representing Mr. C. Arul Vadivel @ Sekar, learned counsel for the N.H.A.E., Mr. V. Kathirvelu, learned Assistant Solicitor



General representing Mr. S. Jeyasingh, learned Central Government Standing Counsel appearing for the Ministry of Road Transport and Highways and Ministry of Environment, Forest and Climate Change and Mr.R.Sethuraman, learned Special Government Pleader appearing for the State.

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5 At the outset, it is to be stated that the writ petition in W.P. (MD) No.9834 of 2019 preferred by Ambbigapathy is liable to be dismissed with exemplary costs for rank suppression based on the catena of judgments of the Supreme Court, wherein, the persons adopting sharp practices for stalling public activities, have been heavily come down. Suffice it to quote the following passage from the judgment in **G. Narayanaswamy Reddy (dead) and another vs. Government of Karnataka and another:**¹

"2. Whatever the ultimate effect of the stay orders, in view of the provisions of Section 11-A of the Land Acquisition Act, to which we have already referred earlier, it is beyond dispute that the fact of the stay orders was highly material in the determination of these special leave petitions. Curiously enough, there is no reference in the special leave petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter-affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the special leave petitions are liable to be rejected. It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the special leave petitions."

(emphasis supplied)

6 Now, we proceed to advert to the arguments advanced by the learned counsel for the parties one by one.

7 In support of the stand of the petitioners that environmental clearance is necessary, reliance was placed on the Division Bench judgment of this Court in **P.V. Krishnamoorthy vs. Government of India, represented by the Secretary, Ministry of Road Transport and Highways, New Delhi and 3 others**², wherein, the

1 (1991) 3 SCC 261



notifications proposing to acquire lands for the Green Field Chennai - Salem Highway Project, which were the subject matter of challenge, were quashed and the batch of writ petitions allowed.

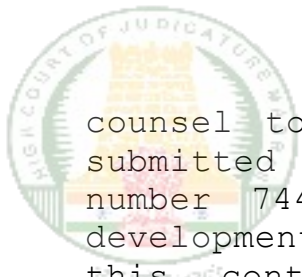
8 In response to the above, the learned Additional Solicitor General submitted that the very same Division Bench, in an earlier judgment in **G.Sundararajan vs. Union of India, represented by the Secretary, Ministry of Rural Development, Government of India, New Delhi and others**³, in which also the subject matter of challenge was the acquisition proceedings initiated under the National Highways Act qua Green Field Chennai - Salem Highway Project, had negatived the challenge to the Constitutional validity of Section 105 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and had consequently, dismissed the said writ petition.

9 It is true that, subsequently, as stated above, the very same Division Bench had quashed the land acquisition proceedings in **P.V.Krishnamoorthy** (supra). However, it is noteworthy that in paragraph no.55 of the said judgment, the Division Bench held thus:

"55 Thus, considering the peculiar facts of the instant, magnitude of the project, the proposed alignment, which admittedly cuts across the forest land, water bodies, big and small fertile agricultural lands, etc., it is necessary that prior Environmental Clearance is required before the respondents proceed further, pursuant to the notification under Section 3-A(1) of the Act."

10 Be it noted that, in **P.V. Krishnamoorthy** (supra), the project cutting across five districts and running to 276 kms. with more than 60 metres RoW, was estimated at a cost of Rs.10,000 crores, whereas, the project which is assailed in the instant writ petitions runs to 29.96 kms. with just 60 metres RoW. As observed in **P.V. Krishnamoorthy** (supra), the order passed therein can have no application to the facts of the instant case. That apart, we are informed that the Government has taken the matter on appeal to the Supreme Court and the same is pending.

11 The learned counsel for the petitioners contended that the actual length of the project, which is the subject matter of challenge in these writ petitions is 83 kms., and that the petitioners are aggrieved over the entire project on the ground that it does not have environmental clearance as it falls under the category of a "new project". In this regard, the learned



counsel took this Court through the Schedule to the NH Act and submitted that the project in question has been assigned the number 744-A, which shows that it is a new project and not development of an existing project. Before delving further on this contention, the question as to whether environmental clearance is necessary for the project in question, needs to be addressed.

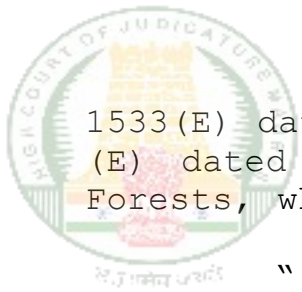
12 The learned Additional Solicitor General took this Court through the notifications issued under the Environment (Protection) Act, 1986 and submitted that for a road project which is less than 100 kms, there is no necessity to obtain environmental clearance. As a riposte, Mr.AR.L.Sundaresan placed reliance on the notification in S.O. 1533(E) dated 14.09.2006 issued by the Ministry of Environment and Forests under the Environment (Protection) Act and took us through Item 7(f) in the Schedule to the Act, to contend that all National Highways require environmental clearance, irrespective of the length of the road and as such, the present project being a new one, environmental clearance is all the more necessary.

13 To appreciate this contention, it is profitable to extract the relevant portion of S.O. 06(E) dated 01.01.2018 of the Ministry of Road Transport and Highways, by which, NH-744A is sought to be included in the First Schedule to the NH Act:

Serial No.	New National Highway No.	Description of National Highways
(1)	(2)	(3)
461	744A	The Highway starting from its junction with NH-744 near Alampatti connecting Vadagarai, Nedummadurai, Eliyarpatti, Erukkilaivellur, Kondagai, Manalur, Kunnathur, Parayankulam, Thamaraipatti, Iraniyam, Usilampatti, Kulamangalam, Kalvellipatti, Tatampatti and terminating at its junction with NH-44 near Vadipatti in the State of Tamil Nadu (Madurai Ring Road).

From a reading of the above extracted portion, it is quite easily discernible that National Highway 744A is a Ring Road going around Madurai connecting NH 44 at Vadipatti to NH 744 at Aalampatti. At the risk of repetition, what is under challenge is only the notification relating to the first phase measuring 29.96 kms.

14 Now, coming to the notifications issued under the Environment (Protection) Act, we perused the notification in S.O.



1533(E) dated 14.09.2006 and the subsequent amendment in S.O. 2559 (E) dated 22.08.2013 issued by the Ministry of Environment and Forests, wherein, it is clearly stated thus:

"(ii) Expansion of National Highways greater than 100 km. involving additional right of way or land acquisition greater than 40 km on existing alignments and 60 km. on re-alignments or by-passes."

From a bare reading of the above amendment, it is limpid that the project in question does not require environmental clearance for the simple reason that it is only a Ring Road cutting Bangalore Highway and Chennai Highway, which goes around Madurai as a by-pass in order to reduce traffic congestion in the Madurai city. That apart, even if the entire stretch of 83 kms. is considered, still, it will fall within the exemption carved out by the amendment notification dated 22.08.2013 as it is well within 100 kms.

15 The next ground of attack of the petitioners is that a Ring Road or a By-pass Road cannot measure 83 kms. and therefore, it cannot be construed as a Ring Road or a By-pass Road. Be it noted, the length of the road will not determine whether a particular road is a Ring Road or a By-pass Road, but, what it serves would be the determining factor. Madurai District is a vast district and from Vadipatti, without entering Madurai, NH 744-A goes around Usilampatti and Vadagarai and joins NH 744 at Aalampatti. Ergo, on facts, we hold that the project in question is indubitably a By-pass Road or Ring Road project and therefore, it does not require environmental clearance. To reiterate, the length of the entire project itself is only 83 kms. and that also will not require any environmental clearance in view of the amendment in S.O. 2559(E) dated 22.08.2013 made to the notification in S.O. 1533(E) dated 14.09.2006.

16 Next, Mr. AR.L. Sundaresan contended that the proposed National Highway passes through two reserve forest areas and therefore, environmental clearance is mandatory. Refuting this contention, the learned Additional Solicitor General drew the attention of this Court to paragraph no.10 of the additional counter affidavit dated 30.11.2018 filed by the Project Director of N.H.A.I., wherein, the following specific stand has been taken:

"10.I submit that in para 9 of the affidavit of the 6th respondent, it is alleged that National Highways Authority of India is proposed to lay the National Highway through the reserve forest Vaguthumalai, which prohibits any kind of non forestry activities in areas classified as forests. I submit that only 400 m. length and 60 m. width has been proposed to acquire in the above said area which comes out only 2.40.0 hect. for which the District Forest Officer, Madurai, has given a report



stating that no tribal settlement, traditional dwellers are in the proposed project. The road passes only through the edge of Vaguthumalai (reserve forest). He has also certified that no trees of 75 years old in this proposed lane passed through Vaguthumalai (reserve forest). Moreover, the proposed formation of road passes only abutting the Reserve Forest land and not passing through middle of the reserve forest. Hence, it shall not endanger to wild life animals, if any."

In view of the above, we have no reason to hold that the acquisition is bad for want of environmental clearance by the Forest Department.

17 The next contention of Mr. AR.L. Sundaresan is that if the proposed project is implemented sans environmental clearance, it would be in violation of Articles 19,21,46,48-A and 51-A of the Constitution of India. In this regard, by garnering support from the judgment of the Supreme Court in **M.C. Mehta vs. Kamal Nath and others**⁴, he contended that this Court, as a guardian of ecology, should read all these provisions into a statute and hold that, on facts, the project requires environmental clearance.

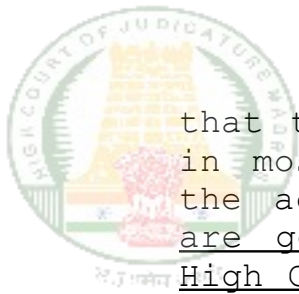
18 In our opinion, when the petitioners have not attributed any acts of *mala fides* nor have they urged that the project violates the provisions of the NH Act, it is not open for this Court to rely upon the judgment in **M.C. Mehta** (supra) and hold that environmental clearance is necessary for this project. At this juncture, apropos it is to extract paragraph no.10 of the judgment of the Supreme Court in **Ramniklal N. Bhutta and another vs. State of Maharashtra and others**⁵:

"10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and

4 (1997) 1 SCC 388

<https://hcservices.pooms.gov.in/hcservices/>

5 (1997) 1 SCC 134



that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenges are generally in the shape of writ petitions filed in High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-à-vis the private interest while exercising the power under Article 226 – indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings.”

(emphasis supplied)

19 Qua environmental clearance, the learned Additional Solicitor General reiterated that the same is not required for this project and further submitted that whether the project requires environmental clearance or not, is a matter to be decided by the National Green Tribunal and not by this Court under Article 226 of the Constitution, in support of which, he placed reliance on the judgment of the Supreme Court in **Bhopal Gas Peedith Mahila Udyog Sangathan and others vs. Union of India and others**⁶:

“40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short “the

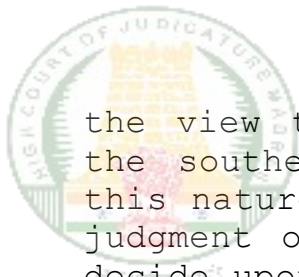


NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned.

41. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialised tribunal, that is, NGT, created under the provisions of the NGT Act. The courts may be well advised to direct transfer of such cases to NGT in its discretion, as it will be in the fitness of administration of justice." (emphasis supplied)

There does appear to be sufficient substance in the aforesaid submission of the learned Additional Solicitor General, inasmuch as the National Green Tribunal is a specialised Tribunal, which has been vested with jurisdiction to deal with issues concerning environment.

20 M/s. AR.L. Sundaresan and Prabhu Rajadurai contended that when the State Government has a proposal for widening the existing Arumbanur - Nagari By-pass Road, the proposed project of the Central Government is redundant. As a riposte, Mr. Arul Vadivel @ Sekar contended that the proposal of the State Government is not a 4 lane road with 60 m. RoW, but, it is only a proposal to expand the existing road and that the proposal is also at a very early stage. He further contended that the existing road is also poor and has lot of built up sections and ergo, it cannot be converted into a 60 m. road as per the Indian Road Congress standard. In our opinion, as pointed out by the Supreme Court in **Union of India vs. Kushala Shetty and others**⁷, the N.H.A.I. is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways and when it is of



the view that, for catering to the road traffic requirements in the southern districts in the next two decades, a ring road of this nature is very much required, we are afraid, we cannot sit in judgment over its decision, since we are not experts equipped to decide upon the viability and feasibility of the project.

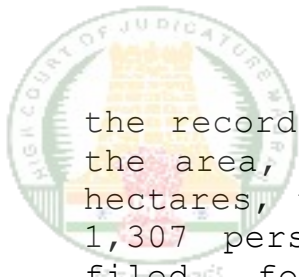
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21 Mr. Prabhu Rajadurai contended that the project is likely to pass through several water bodies and thereby, would affect the source of water supply to the villages. The answer to this contention is available in the counter affidavit dated 11.06.2020 accompanying the Vacate Stay Petition in W.M.P. (MD) No.6170 of 2020 filed by the Project Director, N.H.A.I., wherein, in paragraph no.19, he has given the complete details of the box culverts, pipe culverts, major bridges, minor bridges, canal minor bridges and fly overs for ensuring that the water bodies are not affected and that there is no obstruction for free flow of water to the farm lands. It is befitting to note that he has stated in paragraph no.19 of the said counter affidavit as under:

"19.Hence, it is submitted that ayacut and irrigational facilities will not be affected due to the formation of road as there are many cross drainage structures such as major bridges, minor bridges, box culverts and pipe culverts as tabulated above. It is further submitted that No Objection Certificate have also been obtained from the PWD authorities for executing this project. Hence, the contentions of the petitioner do not carry any legal substance and is therefore liable to be rejected."

22 M/s. AR.L. Sundaresan and Prabhu Rajadurai submitted that the agriculture is the backbone of our economy and acquisition of farm lands will result in famine in the long run. They suggested an alternative route on the northern side of Periyar Main Channel and requested this Court to issue a direction to the respondents to re-align their plan. In response to this submission, Mr. Arul Vadivel @ Sekar contended that at present, out of 29.96 kms., only 7 kms. road runs north of Periyar Main Channel and it will not be possible to lay a ring road only on the northern side of the channel. He further contended that if the alignment proposed by the petitioners were to be accepted, the increase of the road length will be from 29.96 kms. to 60 kms and the road will also run through Vaghuthamalai reserve forest hills. In our opinion, as stated above, the N.H.A.I. is an expert body, but, the petitioners are not experts even on their own showing and we cannot issue a direction based on their assertion calling upon the N.H.A.I. to re-align the road.

23 Coming to the argument that there will be famine in the future if the said agricultural lands are acquired, we find from



the records that out of 2,884.55 hectares of wet land available in the area, N.H.A.I. is acquiring only a miniscule extent of 81.73 hectares, which is only 2.83%. Similarly, we also find that out of 1,307 persons whose lands were acquired, only six of them had filed four writ petitions challenging their individual acquisitions before the learned Single Judge and those writ petitions have also been dismissed, as detailed in paragraph 3.16, supra. Whereas, by filing these two public interest litigations on frivolous grounds and obtaining interim orders from time to time, the entire project has been stalled and that would have a cascading effect on the project cost, which will ultimately have a telling impact on the poor tax payers.

24 In view of the aforemade discussion, this Court finds no merit whatsoever in these two writ petitions.

As a sequitur, these writ petitions stand dismissed as being devoid of merits. The petitioner in each of these two writ petitions shall pay Rs.50,000/- as costs, to the Chief Minister's Public Relief Fund (CMPRF) inasmuch as, the State exchequer is cash-strapped to combat the spread of COVID-19 pandemic and also for extending treatment to the persons affected by the pandemic. Connected W.M.Ps. are closed.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

cad

To

- 1 The Authorised Officer
(Land Acquisition - NH)
District Revenue Officer
Madurai
- 2 The Project Officer
National Highway Commission
Soorya Tower II Floor
K.K. Nagar, Madurai
- 3 The Chief Engineer
Periyar - Vaigai Irrigation
Tallakulam, Madurai



- 4 The District Collector
Madurai District
Madurai
- 5 The Secretary
Ministry of Road Transport and Highways
Transport Bhavan
No.1, Parliament Street
New Delhi 110 001
- 6 The Director
Impact Assessment Division
Ministry of Environment, Forest and Climate Change
Indhira Parayavaran Bhavan
III Floor, Vayu Wing
Jorbagh Road
Aliganj, New Delhi 110 003
- 7 The National Highway Authority of India
G 5 & 6, Sector 10
Dwarka
New Delhi 110 075
- 8 The Competent Authority-cum-
District Revenue Officer
Land Acquisition (NH)
Madurai District
- 9 The Superintending Engineer
Public Works Department
Water Resources Organisation
Mullai Periyar Basin Circle
Madurai

Copy to
The Officer Incharge / Secretary to Government,
Government of Tamil Nadu,
Chief Minister's Public Relief Fund (CMPRF),
Fort Saint George, Chennai 09.

W.P. (MD) Nos.14750 of 2018
and 9834 of 2019
30.06.2020

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TR(07.07.2020) 17P 11C

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