

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.02.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

W.A.No.516 of 2021

A.Kanagasabapathi

... Appellant

Versus

1. The State of Tamil Nadu rep.
By the Additional chief Secretary,
Department of Highways and
Minor Ports,
Secretariat, Chennai 600 009.
2. The Special District Revenue Officer,
(Land Acquisition Officer),
Tamil Nadu Road Development Scheme II,
Salem.
3. The Project Director / Principal Secretary,
Tamil Nadu Road Sector Project II,
171, South Kesavaperumalpuram,
Greenways Road,
Chennai 600 028.
4. The Superintending Engineer,
Tamil Nadu Road Sector Project II,
Kothavari Road,

Nedunchalai Nagar,
Salem.

5.The Divisional Engineer,
Tamil Nadu Road Sector Project II,
416, Collector Office Complex,
Tiruppur.

.. Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letter Patent before
against the order dated 28.08.2020 made in W.P.No.18544 of 2019
passed by this Court.

For Appellant : Mr.N.Manokaran

For Respondents : Mr.Anandha Moorthy
Government Advocate

JUDGMENT

[Order of the Court was made by M.SATHYANARAYANAN, J. through
video conferencing]

The appellant is the Writ Petitioner and he filed W.P.No.18544 of
2019, praying for issuance of Writ of Certiorari, calling for the records
relating to the impugned G.O.(D).NO.250, Highways and Minor Ports
(HN2) dated 20.09.2018, issued by the 1st respondent, which is published
in Tamil Nadu Gazette Notification in Part II-Sec. 2 dated 17.10.2018
and quash the same in respect of S.I.Nos.29 and 30, relating to
R.S.Nos.6/6A and 6/6B Kullampalayam Village, Gobichettipalayam
Taluk, Erode District. The Writ Petition, after contest, came to be

dismissed, vide impugned order dated 28.08.2020 and challenging the legality of the same, the present Writ Appeal is filed.

2. Facts leading to the present round of litigation have been narrated in detail and in extenso in the impugned order, which is the subject matter of challenge in this Writ Appeal and for the sake of brevity, the entire facts are not narrated, except to cull out the relevant facts for the disposal of this Writ Appeal.

3. The writ petitioner claims to be the owner of the land, admeasuring an extent of 2.25 acres comprised in S.F.Nos.6/6A and 6/6B, Kullampalayam Village, Gobichettipalayam Taluk, Erode District and he has also put up a superstructure and residing along with his family and the said property lies on the northern side of Erode-Gobi main road and the petitioner also claims that he has been cultivating sugarcane in a portion of the property and rest of the portion facing the road is exploited for commercial purposes. The 2nd respondent has issued a notification dated 27.11.2014 and it was also published in a vernacular daily on 03.12.2014 under Section 15(2) of the Tamil Nadu Highways Act, 2001, (in short 'Highways Act') for the purpose of acquiring vast extent of lands

for the public purpose of widening of the existing Erode-Ooty State Highways into four lane road (SH 15).

4. The 2nd respondent has issued a Show Cause Notice dated 27.11.2014 under Section 15(2) of the Highways Act, calling upon the petitioner to submit his objections / explanation and responding to the same, the petitioner had submitted his objections in person within a week, followed by various representations dated 24.10.2016, ending with 11.07.2018 respectively.

5. The primordial grievance expressed by the petitioner is that in opposite side of the existing two lane road, there were vast extent of land available including Government poromboke land, so that expansion can be made on that side of the road and instead, they have identified the petitioner's property and in the event of acquisition, not only most of the agricultural land would be taken away, there is likelihood of the demolition of the superstructure also, in which, the petitioner is residing along with his family.

6. The 1st respondent proceeded with the acquisition, issued the impugned Government Order dated 20.09.2018 under Section 15(1) of the Highways Act to acquire Ryotwari dry, natham and Rayathu Mani lands admeasuring an extent of 6992 sq.mts for the purpose of upgrading the State Highways (SH-15) Gobichettipalayam-Erode Road in Kullampalayam and Vellalapalayam Villages, Gobichettipalayam Taluk, Erode District and accordingly made challenge to the said Government Order.

7. he Special District Revenue Officer, (Land Acquisition Officer), Tamil Nadu Road Sector Project-II, has filed a counter affidavit and took a stand that the Show Cause notice under Section 15(2) of the Highways Act, dated 27.11.2014, was issued on 03.12.2014, granting 30 days time to respond to the same and it was served on the writ petitioner on 09.12.2014 through Village Administrative Officer and that apart, publication in two news dailies in vernacular and English language came to be published on 04.12.2014, respectively and local publication was also effected on 04.12.2014 and despite that he did not submit any representations within a time frame and belatedly submitted his objections only during October 2016 and as such it is not open to the

petitioner to make a complaint as to the non compliance of Section 15(2) of the Highways Act read with Rule 5(iii) of the Tamil Nadu Highways Rules, 2003 and prayed for dismissal of the Writ Petition.

8. The learned Single Judge, after taking note of the materials placed and upon hearing the rival submissions, found that the petitioner was served with the Show Cause Notice under Section 15(2) of the Act on 09.12.2014 and he did not respond immediately and the earlier objection made by the petitioner was only on 24.10.2016 and by that time, the enquiry was over and in respect of the persons, who submitted their objections, they were heard on 28.01.2015 and the said objections were forwarded to the State Government who took a call in the form of Government Order on 20.09.2018 and it was followed by Gazette publication dated 17.10.2018.

9. This Court has also considered the plea as to the earlier decision of the Court in declaring the provisions of the Tamil Nadu Highways Act, as unconstitutional and on appeal, the Hon'ble Supreme Court of India has stayed the relevant portion of the order, which is also followed by a Validation Act, 2019 and rejected the said ground. The learned

Judge, having found that the petitioner has failed to avail the opportunity of submitting representation / objections within a time stipulated and taking note of the subsequent development, found that there are no reasons to interfere with the impugned order and accordingly dismissed the same, vide final order dated 28.08.2020. Aggrieved by the same, the present Appeal is filed.

10. Mr.N.Manoharan, learned counsel appearing for the appellant would submit that the writ petitioner is not educated and also drawn the attention of this Court to the photographs made available from pages 94 to 99 of the typed set of documents filed along with this Writ Appeal and would submit that a perusal of the photographs would clearly reveal that in the opposite side of the road, there were enough space available in the form of Government poramboke lands and instead of choosing the said place for extension of road, the opposite side of the road, wherein the petitioner property is situated along with superstructure has been targeted and he would further add that in the absence of any specific time limit under Section 15(2) of the Highways Act, fixing the period of 30 days, the notice issued under Section 15(2) of the Highways Act, is *per se* unsustainable and in the light of the tenable objections raised by the

petitioner, the respondents concerned ought to have considered the representation and disposed of the same on merits and in the light of the fact that the constitutional right guaranteed to the petitioner under Section 300A of the Constitution has been violated with impunity and prays for interference.

11. *Per contra*, Mr.Anadamurthy, learned counsel appearing for the 1st respondent would submit that the petitioner did not dispute the fact of receipt of Section 15(2) of the Act notice and though notice stipulated that 30 days time was granted to submit his objections, the petitioner has submitted his objections only on 24.10.2016, by that time, much water has flown under the bridge and he would further add that with regard to the allegations of the land for acquisition purposes, the scope of interference by this Court, in exercise of its power under Article 226 of the Constitution of India, is very limited and since the learned Judge had elaborately considered the arguments advanced and materials placed, has rightly reached the conclusion to dismiss the Writ Petition and prays for dismissal of this Writ Appeal with exemplary costs.

12. This Court paid its anxious consideration and best attention to the rival submissions and also perused the materials placed before it.

13. The only point urged by the learned counsel appearing for the appellant / writ petitioner is that though the notice dated 27.11.2014 issued to the mother of the petitioner as well as to the petitioner, granting some 30 days time from the date of receipt of the notice to submit objections, since relevant statutory provision is silent, it cannot be termed as mandatory, but only directory and as such, the representation / objections submitted by the petitioner on 24.10.2016, ought to have been considered objectively. In the light of the fact that in the said representation, the petitioner has specifically pointed out the availability of vast extent of land, which is adjacent to the existing two lane road, in the form of Government poramboke land and in the absence of a positive consideration of the same, the acquisition proceedings in respect of the petitioner's land ought not to have been proceeded and prays for interference.

14. The learned counsel appearing for the petitioner has also placed reliance upon the judgment rendered by a Division Bench of

Andhra Pradesh High Court in *AIR (2004) AP 1 (District Collector and Others Vs. P.Nagabushana Rao and Others)*. A perusal of the said judgment would disclose that the Division Bench has considered the question, whether acceptance of the amount without protest amounts to waiver of the right to seek reference under Section 18 of the Land Acquisition Act, 1984. The Division Bench having taken note of the fact that in respect of a person, whose land has been acquired is not satisfied with the compensation offered, he is entitled to seek for reference for determination of the amount of compensation by a Civil Court, for which limitation is provided under Section 18 of the Act, though fit to answer that if a person has not filed an application under Section 18 of the Act to make a reference, then irrespective of the fact whether he has received the compensation awarded by the Collector with or without protest, he would be a person aggrieved within the meaning of Section 28-A of the Act and as such he is entitled to make an application.

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15. In the considered opinion of this Court, the said judgment has no application to the case on hand, for the reason that in terms of Sub Section 2 of Section 15 of the Highways Act, discretion is vested with the Government to prescribe time in the notice, as to how the land should

be acquired. In the notice dated 27.11.2014, under issued under Section 15(2) of the Highways Act, the time limit of 30 days from the date of receipt of the notice, was prescribed and it is not even the case of the petitioner that he has not received the notice.

16. Though the petitioner in the affidavit filed in support of the Writ Petition would aver that he appeared in person and made his objections, no materials have been placed to establish that fact, except his representation / objection dated 24.10.2016, which is nearly after two years from the date of receipt of Section 15(2) notice.

17. The learned Single Judge, has placed reliance upon the judgment rendered by the Hon'ble Supreme Court of India reported in **2000 (7) SCC 296 (Delhi Administration Vs. Gurdip Singh Uban and Others)** as well as the judgment reported in **2004 (1) CTC 48 (Executive Engineer and Administrative Officer, Tamil Nadu Housing Board, Vellore Housing Unit Vs. S.Govindaraj)**, wherein it has been held that if the objections are not submitted by the land owners within the prescribed time limit, they cannot be later allowed to complain with regard to the enquiry conducted by the authorities.

18. Admittedly the petitioner, despite the receipt of the notice dated 27.11.2014, did not respond to it immediately and belatedly submitted his objections, nearly after two years. Insofar as the availability of alternative land is concerned, identification and acquisition of the land for public purpose falls within the exclusive domain of the authorities, who are acquiring the land. This Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot issue a positive direction as to the location / identification of the land and acquisition of the same.

19. In the considered opinion of this Court, the reasons assigned by the learned Single Judge in the impugned order, cannot said to be perverse and that apart, there is no error apparent on the face of the record. This Court on an independent application of mind, is of the considered view that there is no merit in this Writ Appeal.

20. In the result, the Writ Appeal is **dismissed**, confirming the order dated 28.08.2020, made in W.P.No.18544 of 2019. No costs.

[M.S.N.,J] [A.A.N.,J.]
12.02.2021

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Internet: Yes /No

Index: Yes/ No

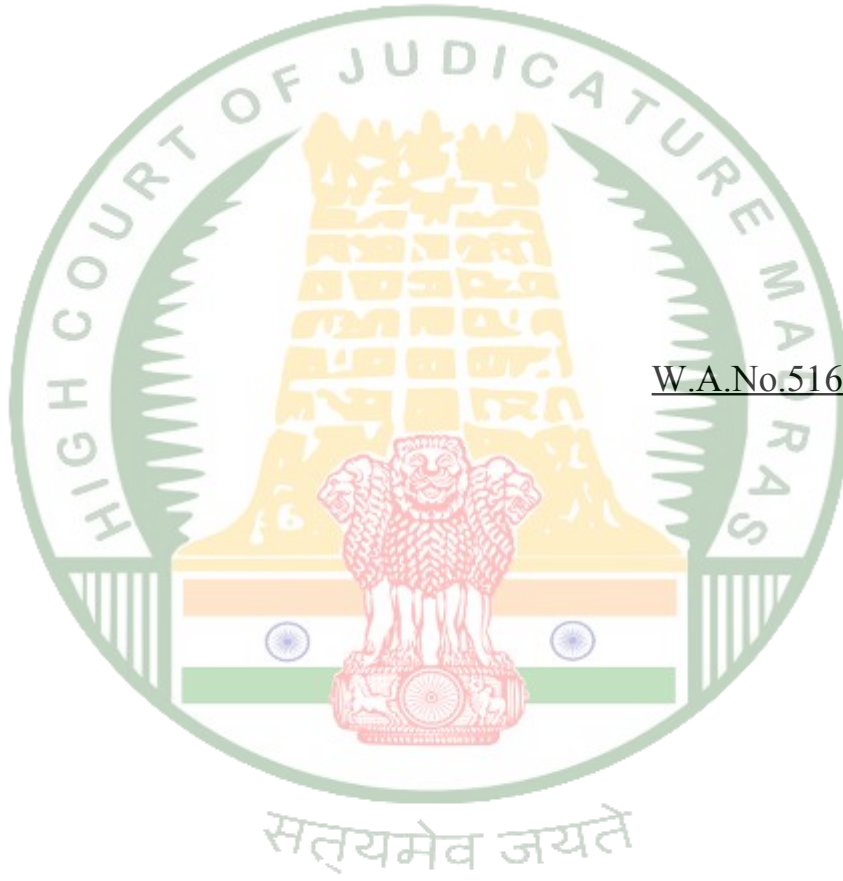
To

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The State of Tamil Nadu,
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