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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2021

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.3796 of 2019

and

W.M.P.Nos.4213 and 4214 of 2019

1. T.M.Abdul Rahim

2.Abrar

3.Ameen

...Petitioners

Vs.

1. The Secretary,
The State of TamilNadu,
Highways and Minor Ports Department,
Fort St.George,
Chennai - 600 009.

2. The District Collector,
Collectorate,
Tiruvannamalai - 606 604.

3. The Tahsildhar,
Polur Taluk Office,
Polur,
Tiruvannamalai - 606 803.

4. The District Revenue Officer,
Collectorate,
Vengikkal,
Thiruvannamalai - 606 604.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records pertaining to Rc.M1/54005/15 dated 20/06/2018 of the 4th respondent and the proceedings No: Na.Ka.M1/54005/15 dated 28/09/2018 and quash the same and consequently direct the respondents to release the lands of the petitioners in S.F.Nos.102/C, 104A, 104/7 and 104/4 to the total extent of 32,700 Sq.ft in Polur Town, Polur Taluk,



Tiruvannamalai District by considering the representation of the petitioners dated 15.09.2018.

For Petitioners : Ms.P.Bagyalakshmi
For Respondents : Mr. V.Veluchamy
Government Advocate.

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ORDER

This writ petition has been filed for a Certiorarified Mandamus to call for the entire records pertaining to Rc.M1/54005/15 No.Na.ka.M1/54005/15 dated 20.06.2018 of the fourth respondent and the proceedings No.Na.Ka.M1/54005/15 dated 28.09.2018 and consequently direct the respondents to release the lands of the petitioners in S.F.Nos.102/C, 104A, 104/7 and 104/4 to the total extent of 32,700 Sq.ft in Polur Town, Polur Taluk, Tiruvannamalai District by considering the representation of the petitioners dated 15.09.2018.

2.The case of the petitioners is that they are the absolute owners of the properties inherited from their predecessor in title in S.F.Nos. 102/2C, 1C, S.F.Nos.104A,104/4, 104/7 at Polur Town, Polur Taluk, Thiruvannamalai District, they are running rice mill in the said premises at S.F.No.104A and in the remaining shops tenants are in occupation at S.F.No.102/2C.

3.The petitioners submit that the first respondent designated the fourth respondent to acquire the land purporting to have exercising jurisdiction under Sub Section 2 of Section 15 of the Tamil Nadu Highways Act, 2001, Act No.34 of 2001.

4.The petitioners further submit that the first respondent needed the lands specified in the schedule therein situated in Polur Town, Polur Taluk, Thiruvannamalai District for public purposes for forming road over bridge in CC Road to Polur - Arani Railway Road by issuing show cause notice directing to sent reply within 30 days from the date of giving public notice on why the lands should not be acquired in their proceedings Rc.M1/54005/15 dated 20.06.2018 under which this petitioners land is mentioned as item Nos.15 and 18.

5.According to the petitioners, their objection for the acquisition of their land and sought to exclude their lands from acquisition for the reasons as set out in his reply dated 15.09.2018.

6.The petitioners submit that the fourth respondent has overruling the said objections in his proceedings



13.The petitioners further submit that the proceedings initiated by the Authority is illegal arbitrary and in excess of jurisdiction vested with them in that the construction of the 2-way bridge will only aggravate the problem of traffic congestion since there exist on the North, the rice committee, Goat Market, Veterinary Hospital, private schools, marriage halls.

14.According to the petitioners, if the construction of the 2-way bridge is also done, it will prevent the free flow of vehicular traffic which will never be in the larger interest of the public and in that from all the nearby villages of polur, the agriculturists would carry the sugar cane in the lorries and tractors only through the Railway junction road and therefore, construction of bridge in three bifurcating Road Junction in the C.C. Road - Polur - Chettupet.

15.The petitioners submit that the proposal of construction of flyover bridge is warranted without the same the construction of bridge in the present proceedings will never serve the public at large for free flow of vehicular traffic and prayed for dismissal of the same and if the land acquisition proceedings are initiated, the entire shops will be demolished, the lessee's business, trade, their livelihood, their families will be severely affected and even the petitioners will be deprived of their livelihood.

16.The petitioners further submit that the Tamilnadu Highways Act, 2001, in the said G.O.M.S.45 dated 14.05.2014 is extended for a further period of one year and after the said date, the said Act got lapsed and the Right to fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act, 2013, Central Act has got over riding effect over the State Act.

17.The petitioners have no other alternative remedy except to approach this Court under Article 226 of the Constitution of India. Hence, the writ petition filed.

18.The learned Government Advocate appearing for the respondents has filed a counter on behalf of the respondents 1, 2 and 4. The relevant paragraphs of the counter are extracted hereunder:

"11.In so far as the averments relating to alternative alignment as well as the suitability of the present alignment, I humbly submit that the present alignment is approved by the High Level Technical Committee comprised of 1. Superintending Engineer(H) Projects, 2. Superintending Engineer (H) C&M, 3. Superintending Engineer (H) NABARD & RR, 4. Superintending Engineer (NH) and the said committee



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only after taking into consideration of all the relevant factors approved this alignment. Further, since the proposals u/s. 15(1) of the Act is under consideration of the first respondent, the report of the fourth respondent, objections of the land owner as well as the reply furnished by the Highways will be taken into consideration and on that basis the first respondent will pass orders u/s. 15(1) of the Act and till such time the petitioners are not having any cause of action to challenge the acquisition notice at the threshold stage.

12.I humbly submit that the New Act 30/2013 came to be enacted on and from 01.01.2014 thereby it repealed only the Land Acquisition Act, 1894. By virtue of introduction of New Act 30/2013, the Tamilnadu Highways Act 2001 is neither expressly nor impliedly repealed as contended by the petitioners herein for the reason that the Tamilnadu Highways Act 2001, is a self contained and an independent Code which received the assent of the President of India. The Tamilnadu Highways Act 2001 cannot said to be invalidated since it is saved by virtue of Article 254 (2) of the Constitution of India.

13.I humbly submit that the G.O.Ms.No.45 dated 14.5.2014 relied on by the petitioners is not relating to acquisition under Tamilnadu Highways Act and it is concerned with the Industrial Purposes Act. In so far as acquisition proceedings undertaken under the Tamilnadu Highways Act 2001, initiated on or after 1.1.2014 G.O.Ms.No.169 dated 31.12.2014 is issued by the first respondent in and by which it is stated that in respect of the acquisition proceedings initiated on or after 1.1.2014 where the show cause notice issued u/s. 15(2) of the Act, the provisions relating to determination of compensation in accordance with the first schedule and rehabilitation and resettlement as specified in second and third schedule of the New Central Act 30/2013 will apply. Hence, the contention of the petitioners that the New Act has got an overriding effect on the Tamilnadu Highways Act 2001 and the notices issued under Tamilnadu Highways Act 2001 is a total misconception of the law cannot be sustained in law and as such the above writ petition is liable to be dismissed.

The Land Acquisition Proceedings have been initiated by correct rules and procedures. There is no violation of Act and there on rules. The Acquisition of proposed lands are inevitable and



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absolute necessity in the interest of public purposes. The entire records pertaining to the office Rc.M1/54005/2015 dated 28.09.2018 are all with in rules. There in no valid reasons found in the contents of writ petition to be considered at this initial stage.

In the circumstances stated above it is humbly prayed that this Hon'ble court may kindly be pleased to dismiss the writ petition and render justice."

19.Heard, learned counsel for the petitioners and the learned Government Advocate for the respondents and perused the materials available on record.

20.On scrutiny of the counter filed by the learned Government Advocate, it is seen that the present alignment has been approved by the High Level Technical Committee comprised of the Superintending Engineer(H) Projects, the Superintending Engineer(H) C&M, the Superintending Engineer (H) NABARD & RR, and the Superintending Engineer (NH) and the said Technical Committee only after taking into consideration of all the relevant factors approved this alignment and therefore, this Court is not inclined to interfere with the order passed by the fourth respondent.

21.In view of the above facts and circumstances of the case and considering submission made by either side, this Court is not inclined to consider the request made by the petitioners and the same is rejected. However, the petitioners are granted with liberty to challenge the notices being issued by the Authorities. The Authorities are hereby directed to consider the claim made by the petitioners at the time of fixing compensation.

22.With the above observations and direction, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

skr/pam



To

1. The Secretary,
Highways and Minor Ports Department,
Fort St.George, Chennai - 600 009.
2. The District Collector,
Collectorate, Tiruvannamalai - 606 604.
3. The Tahsildhar,
Polur Taluk Office, Polur,
Tiruvannamalai - 606 803.
4. The District Revenue Officer,
Collectorate, Vengikkal,
Thiruvannamalai - 606 604.

W.P.No. 3796 of 2019

KV(CO)
SU(05/01/2022)