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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.08.2021

PRONOUNCED ON : 13.08.2021

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.NO.6935 OF 2021

AND

W.M.P.NO.7559 OF 2021

Pavai Varam Educational Trust,
Represented by its Chairman, Mr.v.Natarajan
64-C, Rotary Nagar,
Rasipuram - 637 409.

... Petitioner

.Vs.

1. The Principal Secretary,
Highways and Minor Ports Department,
Secretariat,
Chennai - 600 009.
2. The District Collector,
Namakkal,
Namakkal District.
3. The Special Tahsildar (Land Acquisition)-cum-
District Revenue Officer,
Namakkal,
Rasipuram, Bye-Pass road,
1st Floor, Tahsildhar's Office,
Rasipuram - 637 408
4. The Superintending Engineer,
Office of the Superintending Engineer (H),
Salem Circle, Salem - 636 302.
5. The Divisional Engineer,
Office of the Assistant Divisional Engineer (H),
Namakkal Sub-division,
Construction and Maintenance Department,
Namakkal - 637 001.

... Respondents



PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records on the file of the first respondent in G.O.No.19 dated 10.02.2021 passed under Section 15(3) of the Tamil Nadu Highways Act, 2001 (Act 34/2002) and to quash the same and further direct the respondents to follow the procedure contemplated under the said Act and to pass such further or other orders.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.K.M.D.Muhilan
Government Advocate

ORDER

This Writ Petition has been filed in the nature of Writ of Certiorarified Mandamus seeking to interfere with the order dated 10.02.2021 passed by the first respondent in G.O.No.19/2021 passed under Section 15(3) of the Tamil Nadu Highways Act, 2001 (Act 34/2002) and to direct the respondents to follow the procedure contemplated under the said Act and to pass such further or other orders.

2. The writ petitioner claims to be a Trust running an institution after obtaining necessary approval from the Education Department. They had constructed buildings and provided playgrounds. The third respondent/Special Tahsildar (Land Acquisition)-cum- District Revenue Officer, Namakkal had issued paper publication on 10.10.2010 for proposed acquisition by the Tamil Nadu Highways Department for the formation of Bye-pass Road between Singalanthapuram-Ponkurichi to avoid traffic congestion in Rasipuram Town.

3. The lands of the petitioner measuring 2400 sq.mts., in S.F.No.57/2A2A was also included. The third respondent by proceedings in Na.Ka.No.12/10/A in November 2010 issued a show cause notice under Section 15(2) of the Tamil Nadu Highways Act, 2001 calling for objections for the proposed acquisition.

4. The petitioner claimed that they had made a representation on 06.11.2010 giving objections and had also issued a reply to the show cause notice on 20.11.2010. By their letter dated 20.11.2010, the petitioner raised objections claiming that the proposed alignment fixed by the Highways Department passed through the college land of the petitioner and leads to Ottankuttai (Pond) in S.No.1/2, and would therefore



disturb the water catchment area and would create water pollution in the locality. It was also stated that on the northern side of the property, there was an existing ring road, namely, Anaipalayam Metal Road, which connects Kurukkupuram Thaar Road in S.F.No.70 and A.K.Samuthiram Village in S.F.No.1/1. They claimed that the Bye-pass road can be re-aligned by the Highways Department by extending the existing Anaipalayam Thaar Road and this would not cause any damage to the Ottankuttai. They also pointed out an alternate alignment that the Bye-pass road can be re-aligned from the south side of the property and on Ottankuttai's bed. It was claimed that no damage would be caused either to the college or to the Ottankuttai. They also stated that they are running an exclusive Women Educational Institution and that the entire playground, utility area, compound walls and main gate would be affected.

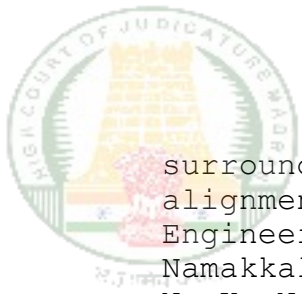
5. However, the Highways Department organised an inaugural function on 17.02.2011 and announced the commencement of project. The petitioner claimed that this was so done without passing orders on the objections of the petitioner. The petitioner therefore filed W.P.No.8574 of 2011, in the nature of a writ of Mandamus. By order dated 11.04.2011, a learned Single Judge of this Court directed the respondents to comply with the provisions of the Tamil Nadu Highways Act, 2001 before proceeding with any action acquiring the land for the purpose of expansion of the road.

6. The petitioner stated that the third respondent by order dated 17.08.2011 in Na.Ka.No.11696/2008/H6 again rejected the objections dated 06.11.2010 and 20.11.2010.

7. Complaining violation of the procedure, the petitioner filed W.P.No.4269 of 2012 for Certiorarified Mandamus seeking interference with the said order. A learned Single Judge of this Court by order dated 21.12.2017 remitted the matter back to the competent authority for fresh consideration. The authorities were directed to consider the objections raised by the petitioner and grant an opportunity to the petitioner to file objections.

8. Thereafter, the third respondent directed the petitioner to file objections. The petitioner submitted objections on 23.02.2018 also giving an alternate sketch. The petitioner claims that they were waiting to participate in the enquiry. However, they claimed, they did not receive any notice.

9. The third respondent by order dated 28.03.2018 in proceeding in Na.Ka.No.17175/Rasipuram Highways/2018/Oo.Po.1 rejected the objections raised by the petitioner and stated that except Anaipalayam Village, the acquisition of the lands in the



surrounding villages had already been completed and that the alignment cannot be altered. The fifth respondent / Divisional Engineer, Office of the Assistant Divisional Engineer (H), Namakkal Sub-Division by proceedings dated 03.04.2018 in Na.Ka.No.287/2018/A3 also rejected the objections of the petitioner. Both the orders were communicated to the petitioner. The third respondent then passed final orders under Section 15 (3) of the Tamil Nadu Highways Act, 2001.

10. It was claimed by the petitioner that the said order was passed without any enquiry.

11. The petitioner again filed W.P.No.10248 of 2018 and a learned Single Judge of this Court by order dated 16.07.2018 held that the second respondent, had rejected the objections of the petitioner without authority and therefore set aside the impugned order. The matter was remanded back to the second respondent/District Collector, Namakkal, to submit all details of the enquiry to enable the Government to pass orders in accordance with law.

12. Thereafter, the petitioner sent a letter on 13.12.2018 seeking personal hearing by following the procedure under Rule 5 of the Tamil Nadu Highways Rules, 2003. The petitioner again claimed that they were eagerly waiting for personal enquiry and that they also intended to cross examine the Highways Department. However, the impugned order now questioned in the present Writ Petition was passed by the first respondent in G.O.No.19 dated 10.02.2021 rejecting the objections of the petitioner. It is under these circumstances claiming that opportunity had not been granted to the petitioner that the Writ Petition has been filed.

13. Heard the learned counsels.

14. The consistent plea taken by the petitioner in successive Writ Petitions filed before this Court was that they were not heard or that personal hearing was not afforded by the respondents.

15. The third respondent had issued a paper publication on 10.10.2010 in Dinakaran Daily with respect to the proposed acquisition by the Tamil Nadu Highways Department for the formation of Bye-pass road between Singalanthapuram-Ponkurichi in order to avoid traffic congestion at Rasipuram Town. The petitioner's land measuring in extend of 2400 sq.mts., in S.F.No.57/2A2A was also included. The third respondent issued a show cause notice under Section 15(2) of the Tamil Nadu Highways Act, 2001.



16. It is the claim of the petitioner that they immediately gave a representation on 06.11.2010 and a further objection to the show cause notice on 20.11.2010. They claimed that their college playground and the compound wall and the gate would be damaged and affected by the said acquisition and also provided an alternate alignment to be considered by the respondents for the said Bye-pass road between Singalanthapuram-Ponkurichi.

17. The representations of the petitioner were rejected and the petitioner thereafter filed W.P.No.8574 of 2011. A direction was given to the respondents to proceed further in accordance with the provisions of the Tamil Nadu Highways Act 2001.

18. The third respondent thereafter again rejected the objections of the petitioner and questioning that, the petitioner filed W.P.No.4269 of 2012. An order was passed by a learned Single Judge of this Court on 21.12.2017 remitting the matter back to the respondent for fresh consideration. The petitioner was again invited to give their objections.

19. The petitioner claims that they were waiting for an enquiry but that they were not heard.

20. In the meanwhile, the third respondent passed further orders rejecting the representations of the petitioner and also rejecting the re-alignment proposed by the petitioner. The fifth respondent also rejected the objections of the petitioner. Final orders were passed under Section 15(3) of the Tamil Nadu Highways Act, 2001.

21. The petitioner then filed W.P.No. 10248 of 2018 again claiming that they were not heard by the respondents while passing the orders. A learned Single Judge of this Court allowed the Writ Petition and remanded the matter back to the second respondent and a direction was passed that the second respondent shall submit the details of the enquiry to enable the Government to pass orders in accordance with law.

22. The petitioner claims that they were again waiting to be called for enquiry. In the meanwhile, the order now impugned in G.O.No.19 dated 10.02.2021 rejecting the objections of the petitioner came to be passed, leading to the filing of the present Writ Petition.

23. In effect, the grievances of the petitioner are that they were not heard before the orders were passed or rather they were not even invited to be heard before the orders were passed and that their proposal of re-alignment of the road proposed to be constructed was rejected.



24. The respondents filed typed set of papers and the records speak otherwise.

25. There has been glaring suppression of material facts by the petitioner before filing the earlier Writ Petitions. At every point of time, the petitioner complained that they were not heard. As a matter of fact, the first date of notice inviting objections was on 31.01.2018 in Na.Ka.No.2999/2018/H6. This notice was received by the petitioner and enquiry was fixed on 16.02.2018. In this enquiry, Dr.K.K.Ramasamy, the Director-Administration of Paavai Institution, K.Senthil of Paavai Institution, K.Palanivel, Chief Accountant, A.S.Rajakumar, Special Tahsildar (Land Acquisition) and M.Manikandan, Village Administrative Officer, Anaipalayam, Rasipuram, were all present and they had affixed their signatures in the records. The petitioner has suppressed this particular fact in the affidavit filed in support of this Writ Petition.

26. Thereafter, on 16.02.2018, on conclusion of the enquiry, orders were passed in Na.Ka.No. 2999/2018/H6. A further enquiry was held as contemplated under Section 15(2) of the Tamil Nadu Highways Act 2001 on 23.02.2018. This enquiry was attended by V.Natarajan, Chairman, Paavai Varam Educational Trust, Rasipuram, A.S.Rajkumar, Special Tahsildar (Land Acquisition) and M.Manikandan, Village Administrative Officer, Anaipalayam.

27. It must be mentioned that V.Natarajan, Chairman, is the affiant before this Court. He had not even whispered about this particular aspect. The affidavit has therefore not just suppressed material facts but by way of such suppression, false facts have been pleaded stating that the petitioner was not even invited for enquiry. The necessary records wherein the affiant V.Natarajan, had signed has been produced by the respondents by way of typed set of papers. It is also seen that it is only thereafter orders, which are now impugned in the present Writ Petition have been passed by the respondents.

28. Section 15 of the Tamil Nadu Highways Act, 2001 is as follows:

"15. Power to acquire land.-(1) If the Government are satisfied that any land is required for the purpose of any highway or for construction of bridges, culverts, causeways or other structures thereon or for any purpose incidental or ancillary thereto, in furtherance of the objects of this Act, they may acquire such land by publishing in the Tamil Nadu Government Gazette a notice specifying the description of such land and the particular purpose for which



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such land is required.

(2) Before publishing a notice under sub-section (1), the Government shall call upon the owner and any other person having interest in such land to show cause within such time as may be specified in the notice, why the land should not be acquired. The Government shall also cause a public notice to be given in such manner as may be prescribed.

(3) The Government may, after considering the cause, if any, shown by the owner or other person having interest on such land, pass such an order under sub-section (1), as they may deem fit."

29. Rule 5 of the Tamil Nadu Highways Rules, 2003 is as follows:-

"5. Manner of publication of the public notice.- Before publishing a notice under sub-section (1) of section 15, the Government or the Collector or the Special Deputy Collector (Land Acquisition) Tamil Nadu Urban Development Project III] as the case may be, shall in addition to calling upon the owner and any other person having interest in the land to show cause as to why the land should not be acquired, shall also cause a public notice to that effect to be published in one English and in one Tamil newspapers having circulation in the locality. The said notice shall also be displayed in the offices of the,-

(1) Highways Authority of the division concerned; (ii) Village Administrative Officer of the village concerned; and (iii) Tahsildar of the taluk concerned.

(2) If any objection is received from a person interested in the land within the time prescribed in the public notice issued under sub-section 2 of section 15, the Government or the Collector or the Special Deputy Collector (Land Acquisition) Tamil Nadu Urban Development Project III] as the case may be, shall fix a date for hearing the objections and give notice thereof to the objector as well as to the Highways Department. Copies of the objection shall also be



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forwarded to the Highways Department. The Highways Department may file on or before the date fixed by the Government or the Collector or the Special Deputy Collector (Land Acquisition) Tamil Nadu Urban Development Project III, as the case may be, a statement by way of answer to the objections and may also depute a representative to attend the enquiry;

(3) On the date fixed for enquiry or any other date to which the enquiry may be adjourned, the Government or the Collector or the Special Deputy Collector (Land Acquisition) Tamil Nadu Urban Development Project III] as the case may be, shall hear the objector or a person authorised by him in this behalf and the representative, if any of the Highways Department and record any evidence that may be produced in support of the objection and in support of the need for acquiring the land;

(4) Where the enquiry is conducted by the Collector, on completion of enquiry, the Collector shall submit all the details of the enquiry to the Government to pass order under sub-section (3) of section 15;

(5) Where the enquiry is conducted by the Government, the Government will pass order under sub-section (3) of section 15."

30. In 2015-3-L.W.662 [Veeyel Enterprises Vs. State of Tamil Nadu and others], a Division Bench of this Court had occasion to examine Section 15(2) of the Tamil Nadu Highways Act, 2001 and also Rule 5 of the Tamil Nadu Highways Rules 2003. Paragraph Nos. 19, 20, 21, 22 & 29 are as follows:-

"19. Section 15(1) of the Act, 2001 authorises the Government to acquire the land by publishing a notice in the Tamil Nadu Government Gazette, specifying the description of such land and the particular purpose for which it is to be required. The land may be acquired under this section for the purpose of construction of any highway bridges, culverts, causeways or other structures thereon and also for other purpose incidental or ancillary thereto. Under sub section (2) of Section 15, the Government is mandated to issue show cause notice, calling upon the owner or any other person having interest in



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such land, specifying the time to show cause as to why the said land should not be acquired. It is also required that a public notice be given. Section 15(3) *ibid*, prescribes that only after considering the cause, if any, shown by the owner or other person having interest in such land, the Government should pass an order by publishing a notice under sub section (1) of Section 15.

20. Rule 5 of the Rules, 2003 framed therein provides for a mechanism for publication of the public notice. Under sub rule (1) of Rule 5, before publication of the notice under Section 15 (1) of the Act, 2001, the Collector or the Special Deputy Collector (Land Acquisition), as the case may be, is obliged to call upon the owner or any other person having interest in the land to show cause as to why the land may not be required. It is further prescribed that a public notice to that effect shall be published in one English and one Tamil newspapers having circulation in the locality and also the said notice shall be displayed in the office of the Highways authorities of the division concerned, Village Administrative Officer of the village concerned and the Tahsildar of the Taluk concerned.

21. Any other person having interest in the land, as aforesaid, means a person, who is in occupation or in possession or having title or ownership either jointly or separately. Sub-rule (2) of Rule 5 of the Rules, 2003 sets out how to deal with the objection, if any, received from the person interested in the land. The person interested, including the owner, is required to file objections within the time prescribed in the public notice, not from the date of receipt of the personal notice, as pleaded by the appellants.

22. Rule 5(3) stipulates consideration of the objection by the Land Acquisition Officer on the fixed date for enquiry. Before the enquiry, the objection of the land owner or any other person interested in the land, is required to be supplied to the Highways Department to enable them to file a statement by way of answer to the objections and also to depute a representative,



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if necessary. The competent officer, who, in the case on hand appears to be the Land Acquisition Officer, is obliged to hear the objector or a person authorised by him in this behalf and the representative of Highways Department, if any and record any evidence produced in support of the objection. After conducting enquiry, the report has to be sent to the Government under sub-rule (4) of Rule 5 of Rules 2003 for consideration and passing orders under sub-section (3) of Section 15 of the Act, 2001.

29. There is no statutory requirement under the provisions of Act, 2001 and Rules, 2003 like Section 5-A of the Land Acquisition Act to supply a copy of the report to the land owner or any other person having interest in such land and as such, the said provision cannot be imported into the Act, 2001, as the mechanism enshrined in Rule 5 of the Rules, 2003 affords adequate opportunity of hearing to the land owner or any other person interested in such land to place its case before final decision is taken by the Government. "

31. It is thus seen that it had been very categorically held that the Government is mandated to issue show cause notice under Section 15(2) of the Act calling upon the owner or any other person having interest in such land as to why the land should not be acquired. Thereafter, after considering the objections, the Government should pass an order publishing notice under sub-section (1) of Section 15. Under Rule 5, the Collector or the Special Deputy Collector, Land Acquisition has an obligation to call upon the owner or any other person having interest in the land to show cause why the land may not be required.

32. In the instant case, the date of notice inviting objections was fixed on 31.01.2018. The enquiry was held on 16.02.2018 and again on 23.02.2018. It is seen that the acquisition of lands have been completed with respect to the entire stretch and it is only the lands of the petitioner which could not be acquired owing to the consecutive Writ Petitions filed by the petitioner herein.

33. I do agree that the writ petitioner has a right to approach the Court of law but when they do approach the Court of law, it is necessary that they approach with true facts. No Court can extend an arm to a litigant, who suppresses facts particularly the fact that he had actually attended the enquiry and thereafter claims innocence by stating that not even enquiry



notice was served on him.

34. In the instant case, as pointed out, the petitioner had attended the enquiry. The officials of the petitioner institution had attended the enquiry. The Special Tahsildar (Land Acquisition) had attended the enquiry. The Village Administrative Officer had attended the enquiry. It is only thereafter, considering the objections of the petitioner and also on receiving the necessary inputs from the Highways Department, that final orders have been passed by the Government.

35. The other aspect pointed out by the petitioner was re-alignment of lands I am really disturbed by such claim of the petitioner. A rough sketch has been forwarded by the Government and during the course of arguments, the learned counsel for the petitioner admitted having receiving a said copy of the said rough sketch.

36. A careful perusal shows that a portion of the playground of the petitioner alone would be affected. If re-alignment as proposed by the petitioner is to be considered, the lands of the house owners pattadhars in Patta Nos. 59/1, 59/2, 60/1A, 60/1B, 60/3B, 60/3a and 60/4 would all be affected. The petitioner has no consideration for those house owners, whose lands would be directly affected if realignment as suggested is accepted by the respondents. The petitioner does not want to give up a portion of their playground. The main college building is not at all affected.

37. As a matter of fact, it is only in the re-alignment proposed by the petitioner that the road would cut right across the pond. This re-alignment has been rightly rejected by the respondents. This re-alignment has been forwarded by the petitioner more with a self motivated intention to protect themselves without any concern for the losses which would be suffered directly by other land owners of small plots of land. This stand of the petitioner cannot be encouraged and as a matter of fact, it is rejected.

38. In Titanium Equipment & Anode Vs. The State of Tamil Nadu (2018) 4 CTC 814, a learned Single Judge of this Court had held that

"It may be added that the enquiry contemplated under Rule 5 can never be stretched into a judicial enquiry of adversarial character, or equated to one intended for deciding the rights of the parties on a preponderance of probabilities. If it were to be construed thus,



it would impact the power of eminent domain drastically and adversely. "

39. In view of the above observations and more particularly in view of the suppression of material facts by the petitioner in their affidavit, I am not inclined to grant any relief to the petitioner herein. The petitioner has effectively prevented a good public cause for well over a decade. The time has run out. It would have been far far better had the petitioner, claiming to promote education as a cause, abided with the rule of law and had voluntarily surrendered the small portion of the playground required for common cause. The petitioner had chosen not to do so. This Court now directs the petitioner to do so.

40. This Writ Petition is dismissed with costs of Rs.1,00,000/- (Rupees One Lakh only). The petitioner is directed to pay a sum of Rs.50,000/- (Rupees Fifty Thousand only) to the Cancer Institute, Adyar, Chennai, and another sum of Rs.50,000/- (Rupees Fifty Thousand only) to the Government Medical Hospital at Namakkal; both amounts for treatment of poor patients. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

vsg

To

1. The Principal Secretary,
Highways and Minor Ports Department,
Secretariat,
Chennai - 600 009.
2. The District Collector,
Namakkal,
Namakkal District.
3. The Special Tahsildar (Land Acquisition)-cum-
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4. The Superintending Engineer,
Office of the Superintending Engineer (H),
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Namakkal Sub-division,
Construction and Maintenance Department,
Namakkal - 637 001.
6. The Dean,
Cancer Institute,
Adayar, Chennai.
7. The Dean,
Government Medical Hospital,
Namakkal.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.40601

W.P.NO.6935 OF 2021 AND
W.M.P.NO.7559 OF 2021

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PBS/03/09/2021