

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2021

CORAM: JUSTICE N.SESHASAYEE

WP.No.19313 of 2020
&W.P.Nos.2230, 2234, 2238, 2518, 2524 of 2021
WMP.Nos.23913, 23912, 23911 & 23909 of 2020
&WMP.Nos.2528, 2527, 2531, 2535, 2537, 2539 2543,
2546, 2545, 2849, 2848, 2857, 2855 of 2021

1.Narasimman
2.Lakshmanram

...Petitioners

-Vs-

1.The Principal Secretary,
Highways and Minor Harbor Department,
Fort St. George, Chennai.

2.The District Collector,
Krishnagiri.

3.The District Revenue Officer,
Krishnagiri.

4.The Special Tashildar (Land Acquisition),
Hosur Denkanikota Road via
Thalli SH 17 B Railway over bridge
Project, Hosur.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue an order of writ of Certiorarified Mandamus, to call for records on the file of 3rd respondent relating published in the Dinamalar

on 10.02.2020 in Na.Ka.20356/2017/R1 as well as in notification dated 25.02.2020 in Trinity Mirror in Roc.20356/2017/R1 and quash the same as illegal, incompetent in so far as it sought to acquire the property for construction of Hosur Denkanikota Road via Thalli SH 17 B Railway over bridge Project, Hosur where the petitioner's property is situated as illegal, arbitrary, malafide, contrary to section 15 of the Tamil Nadu Highways Act, 2001 without jurisdiction and to consequently direct the respondents to allow the petitioner to live and enjoy the property at T.S.No.44/1 measuring an extent of 0.11.50 hectare in Hosur, Krishnagiri which is sought to be acquired through the impugned proceedings peacefully.

In all WPs:

For Petitioners : Ms.R.Poornima
For Respondents : Mr.S.R.Rajagopal,
Additional Advocate General
for Mr.V.Anandhamurthy,
Additional Government Pleader

COMMON ORDER

In this batch of Writ Petitions, all the petitioners challenge the preliminary notification issued under Section 15(2) of the Tamil Nadu Highways Act, 2001. The lands are notified for a runway over bridge in Hosur.

2.The counters have been filed in all these cases.

3.Mr.V.Anandhamurthy, learned Additional Government Pleader made a statement that pursuant to the notice issued under Section 15(2), enquiry contemplated in terms of Rule 5 of the Highways Rules, 2003 had already taken place and the entire materials are now made available to the Government to take a decision within the meaning of Section 15(3) of the said Act. He also brought to the notice of this Court ***Titanium Equipment & Anode Vs. The State of Tamil Nadu*** [2018 4 CTC 814], wherein the scope of enquiry under Rule 5 has been delineated. The relevant portion of the order is extracted hereunder;

“10.1.....The initial proposal for acquisition is conveyed under Section 15(2) of the Act. This may be equated to Section 4(1) of the Land Acquisition Act, 1894. The power to finalise on the acquisition is granted to the Government under Section 15(3). In between, an enquiry is statutorily contemplated where objections are invited from the owners of those lands which are proposed to be acquired, hear the Highways Department on the said objections, and if they come out with any tangible material in answer to the objections filed by the land owners, the same shall be made available to the latter and thereafter, to let both the sides place necessary materials in support of their respective contentions and then to forward all the materials to the Government. In other words, the nature of enquiry contemplated in Rule 5 is not directed at deciding the proprietary right of the

land owners. Here this Court finds merit in the argument of learned Additional Government Pleader when he submitted that the scope of enquiry is limited to obtaining necessary materials both in aid of and opposing the acquisition and then forwarding them to the Government for it to take a decision under Sec.15(3) of the Act. 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.

10.2 Having obtained the materials under Rule 5(4), it is the Government that takes the decision to acquire or not to acquire, and given the statutory scheme of the Tamil Nadu Highways Act, right to pre-acquisition hearing extends only to the extent of providing materials for the decision of the Government under Sec.15(3) of the Act, and not to participate in the process of decision making by the Government. “

4.Mrs.Poornima, learned counsel appearing for the petitioners would now make a statement notwithstanding what the learned Additional Government Pleader has stated, the petitioners possession is constantly under threat. She also sought the leave of the Court to challenge any 15(1) notification, as and when, it is made.

5.Inasmuch as the enquiry under Section 15(2) is complete, the only right available to the petitioner, at that stage having been exhausted, the Court is not inclined to allow the Writ Petitions.

6.This Court makes it clear, given its earlier experience where this Court had occasion to witness the Authorities freely treading upon the rights of the citizens, this Court cautions the Authorities not to attempt to dispossess any of the petitioners except on payment of compensation amount, to be determined, if any notification under Section 15(1) happens to be made. However, this is not in derogation to any of the right of the petitioner to challenge the notification under Section 15(1), if at all it is made.

7.All the Writ Petitions are accordingly disposed of. No costs.

Consequently, the connected miscellaneous petitions are closed.

30.03.2021

Index : Yes/No

Internet : Yes/No

Tsg

W.P.No.19313 of 2020 and batch.,

N.SESHASAYEE, J.,

Tsg

To

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Highways and Minor Harbor Department,
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- 2.The District Collector,
Krishnagiri.
- 3.The District Revenue Officer,
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Order made in
W.P.No.19313 of 2020 and batch.,

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30.03.2021