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WP(MD) No.4672 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD) No.4672 of 2021

and W.M.P.(MD) No.3788 of 2021

(Through Video Conference)

- 1) S.R.Tamilmani
- 2) Murali Manoj
- 3) M/s.Moorthy Offset Printers Pvt. Ltd.,
a company incorporated under
Companies Act in its registration
No.U22219TN2010PTC075305
having its registered office at
No.2/2258, Nehru Colony, Sivakasi,
Virudhunagar District.

...Petitioners

Vs.

1. The Government of Tamil Nadu,
Rep. by Principal Secretary,
Highways and Smaller Ports Department,
Fort St.George, Chennai 600 009
2. The District Revenue Officer /
Land Acquisition Officer,
Collectorate Complex,
Virudhunagar District, Virudhunagar.
3. The Divisional Engineer,
(Construction and Maintenance),
Highways Department,
Virudhunagar District, Virudhunagar.
4. The Special Tahsildar,
(Land Acquisition Officer),
Outer Ring Road, Sivakasi,
Virudhunagar District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the proceeding of the 2nd respondent in Na.Ka.D1/15675/2014 dated 21.07.2020 signed on 22.07.2020 quash the same, relating to the petitioners herein consequently direct the respondents to shift the alignment of the proposed road in question on the petitioners's land in S.No.259/1 as indicated in the sketch submitted and marked in violet color as shown in the petitioners's representations/ sketches dated 10.06.2020 and 28.08.2020 and pass such further or other orders and render justice.

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



For petitioners : Mr.A.Sivaji

For Respondents : Mr.M.Lingadurai
Government Advocate

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ORDER

The subject matter of challenge in the present Writ Petition is the impugned proceedings of the second respondent dated 21.07.2020.

2. The fourth respondent issued a notice under Section 15(2) of the Tamil Nadu Highways Act, 2001 (hereinafter referred to as the 'Act') on 29.05.2020. The enquiry was fixed on 10.06.2020. On receipt of the notice, the petitioners submitted their objections. The petitioners, while submitting their objections, also stated that there is an effective alternative alignment which can be taken into consideration by the respondents.

3. The second respondent considering the objection,s had chosen to issue the impugned proceedings dated 21.07.2020 rejecting the objections given by the petitioners. Aggrieved by the same, the present Writ Petition has been filed before this Court.

4. Heard Mr.A.Sivaji, learned counsel appearing for the petitioners and Mr.M.Lingadurai, learned Government Advocate appearing for the respondents.

5. Even though submissions were made touching upon the merits of the case, the learned counsel for the petitioners mainly targeted the impugned proceedings of the second respondent on the ground that the second respondent is not vested with the jurisdiction to reject the objections given by the petitioners. The learned counsel submitted that the second respondent ought to have merely forwarded the objections of the Government and the Government should take into consideration the objections given by the petitioners and the reply given by the Highways Department and only thereafter, a notification can be issued under section 15(1) of the Act. The learned counsel in order to substantiate his submissions, brought to the notice of this Court the judgment made in **M.Lenin Kumar and others vs. State of Tamil Nadu, rep. by the Additional Chief Secretary, Highways and Minor Ports Department** reported in (2020) 8 MLJ 152.

6. In the considered view of this Court, there is no requirement to go into the merits of the case and this Court is inclined to interfere with the impugned proceedings of the second respondent on the ground of jurisdiction.



7. The issue involved in the present Writ Petition is squarely covered by the judgment cited by the learned counsel for the petitioners in the case of **M.Lenin Kumar and others vs. State of Tamil Nadu** (cited supra). The relevant portions of the judgment are extracted hereunder:

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"(6) ...

(a) Whether the 2nd respondent was competent to pass orders after conducting enquiry under Section 15(3) of the Act read with Rule 5(3) of the Rules? And;

....

(10) This Court has repeatedly held that the 2nd respondent can only conduct an enquiry by receiving the objections of the land owners and the views of the Department and the entire records must be submitted thereafter to the Government. On such submission, it is for the Government to take an independent decision. The 2nd respondent cannot pass any order rejecting the objections and it will be beyond the power and jurisdiction of the 2nd respondent to do so. In spite of repeated orders passed by this Court, the mistake keeps recurring in every case and it is found in many cases that the authority conducting an enquiry under Section 15 (3) of the Act r/w Rule 5(3) of the Rules keeps passing orders rejecting the objections. Every time, this is interfered by this Court and the authority do not seem to rectify their mistakes.

(11) The only authority who can consider and accept or reject the objections is the Government. The Government is the acquiring body and therefore the Act is vesting such a power only on the Government and no one else will have the power to pass such an order rejecting the objections. The first issue is answered accordingly."

8. It is clear from the above that the second respondent has exceeded his jurisdiction in rejecting the objections made by the petitioners instead of forwarding the same to the Government. The impugned order suffers from lack of jurisdiction and accordingly, the same is hereby quashed.

9. There shall be a direction to the second respondent to conduct the enquiry afresh, under Section 15(3) of the Act r/w Rule 5(3) of the Rules, after affording sufficient opportunity to the petitioners and Highways Department and to consider the objections of the respective petitioners, in accordance with the guidelines issued by this Court in the judgment stated supra and proceed further in accordance with law.

<https://hcservices.courts.gov.in/hcservices/> 10. In the result, this Writ Petition is allowed with the above



directions. No costs. Consequently, connected W.M.P.(MD) No.3788 of 2021 is closed.

Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar(CS)

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NOTE: *In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*

To:

1. The Principal Secretary,
Highways and Smaller Ports Department,
Fort St.George, Chennai 600 009
2. The District Revenue Officer /
Land Acquisition Officer,
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4. The Special Tahsildar,
(Land Acquisition Officer),
Outer Ring Road, Sivakasi,
Virudhunagar District.

+1 CC to M/s.SPL GP (SR-21207[F] dated 05/07/2021)

+1 CC to M/s.A.SIVAJI, Advocate (SR-21148[F] dated 05/07/2021)

W.P. (MD) No.4672 of 2021

Dated: **02.07.2021**

RC (13.07.2021) 4P 7C