



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON:	05.07.2021
DELIVERED ON:	09.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) Nos.14645, 15631, 15632 & 15644 of 2016

and W.M.P. (MD) Nos.11487, 10867, 11496, 11489 of 2016, 5101, 5102, 5099 and 5100 of 2018

(Through Video Conference)

W.P. (MD) No.14645 of 2016:

1) T.Sunil Ross

2) T.Justin Rani

... Petitioners

Vs

- 1) Union of India,
Represented by its Secretary,
Department of Road Transport and Highways,
New Delhi.
- 2) The National Highways Authority of India,
Rep. by its Chairman,
G5 ad 6, Sector 10,
Dawarka, New Delhi 110 076
- 3) The Regional Manager,
Regional Office,
National Highways Authority of India,
Sri Tower, 3rd Floor, DP34,
Industrial Estate, Guindy, Chennai 600 032
4. The Deputy General Manager-cum-
Project Director,
Project Implementation Unit,
National Highways Authority of India,
No.314E, K.P.Road, Near Ayyappan Koil,
Parvathipuram, Nagercoil 629 003
Kanniyakumari District
5. The Competent Authority /
Special District Revenue Officer,
(Land Acquisition) National Highways,
Tirunelveli, With Headquarters at
Observatory Street, Nagercoil,
Kanyakumari District.



6. The Special Tahsildar,
(Land Acquisition National Highways), Unit III,
Vilavancode,
at Thrithuvapuram,
Kuzhithurai, Kanyakumari District.

7. L.M.S.Church,
Chodukkavilai,
Palliyadi, Palliyadi Post,
Kanyakumari District, Pin 629 169
Rep. by its Secretary.

... Respondents

*** R7 is impleaded vide Court order dated 16.03.2018 in W.M.P. (MD) No.5411 of 2018, 5412/2018**

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 5th respondent, pertaining to his order in Na.Ka.J3/79/2016 dated 28.06.2016 on his file issued to the petitioner, consequently the records of the 1st respondent in its notification in S.O.1883(E) dated 26.05.2016 on its file, published in the Gazette of India, Extraordinary, Part II-Section 3-Subsection (ii) dated 26.05.2016 the consequential notification of the 1st respondent in S.O.145(E) dated 16.01.2017 on its file published in the Gazette of India Extraordinary Part II-Section 3-Subsection (ii) No.134 dated 16.01.2017 and the consequential notification of the fifth respondent in Roc.No.J3/79/2016, dated 17.03.2017, on his file, quash the said order dated 28.06.2016 of the fifth respondent in toto and the said notifications dated 26.05.2016 and 16.01.2017 of the first respondent and the said notification dated 17.03.2017 of the fifth respondent insofar as change of alignment of NH47 from that shown in the enclosures to the order of the 4th respondent in NHA/PIU/KK/RTI/2010/1225 dated 14.09.2010 on his file, regarding survey Nos.1038/5, 1038/8, 1038/9, 1038/13 and 1038/10 of Nattalam-A Village, Vilavancode Taluk, Kanyakumari District is concerned, directing the respondents to forbear from proceeding further with land acquisition for, and construction of, NH47, as far as lands in the said survey numbers are concerned, except in accordance with the said enclosures to the said order dated 14.09.2010 of the fourth respondent.

*** Prayer amended vide Court Order dated 12.09.2017 in W.M.P. (MD) No.13772 of 2017**



W.P. (MD) No.15631 of 2016:

Sugis Main

... Petitioner

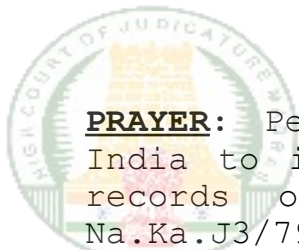
vs.

- 1) Union of India,
Represented by its Secretary,
Department of Road Transport and Highways,
New Delhi.
- 2) The National Highways Authority of India,
Rep. by its Chairman,
G5 ad 6, Sector 10,
Dawarka, New Delhi 110 076
- 3) The Regional Manager,
Regional Office,
National Highways Authority of India,
Sri Tower, 3rd Floor,
DP34, Industrial Estate, Guindy, Chennai 600 032
4. The Deputy General Manager-cum-
Project Director,
Project Implementation Unit,
National Highways Authority of India,
No.314E, K.P.Road, Near Ayyappan Koil,
Parvathipuram, Nagercoil 629 003
Kanniyakumari District
5. The Competent Authority /
Special District Revenue Officer,
(Land Acquisition) National Highways,
Tirunelveli, With Headquarters at
Observatory Street, Nagercoil,
Kanyakumari District.
6. The Special Tahsildar,
(Land Acquisition National Highways), Unit III,
Vilavancode,
at Thrithuvapuram,
Kuzhithurai, Kanyakumari District.
7. L.M.S.Church,
Chodukkavilai,
Palliyadi, Palliyadi Post,
Kanyakumari District, Pin 629 169
Rep. by its Secretary.

... Respondents

*** R7 is impleaded vide Court order dated 16.03.2018 in W.M.P. (MD) No.5412 of 2018.**

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



PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 5th respondent, pertaining to his order in Na.Ka.J3/79/2016 dated 28.06.2016 on his file issued to the petitioner, consequently the records of the 1st respondent in its notification in S.O.1883(E) dated 26.05.2016 on its file, published in the Gazette of India, Extraordinary, Part II-Section 3-Subsection (ii) dated 26.05.2016 the consequential notification of the 1st respondent in S.O.145(E) dated 16.01.2017 on its file published in the Gazette of India Extraordinary Part II-Section 3-Subsection (ii) No.134 dated 16.01.2017 and the consequential notification of the fifth respondent in Roc.No.J3/79/2016, dated 17.03.2017, on his file, quash the said order dated 28.06.2016 of the fifth respondent in toto and the said notifications dated 26.05.2016 and 16.01.2017 of the first respondent and the said notification dated 17.03.2017 of the fifth respondent insofar as change of alignment of NH47 from that shown in the enclosures to the order of the 4th respondent in NHAI/PIU/KK/RTI/2010/1225 dated 14.09.2010 on his file, regarding survey Nos.1038/15, 1042/12 and 1042/13 of Nattalam-A Village, Vilavancode Taluk, Kanyakumari District is concerned, directing the respondents to forbear from proceeding further with land acquisition for, and construction of, NH47, as far as lands in the said survey numbers are concerned, except in accordance with the said enclosures to the said order dated 14.09.2010 of the fourth respondent.

*** Prayer amended vide Court Order dated 12.09.2017 in W.M.P. (MD) No.13769 of 2017.**

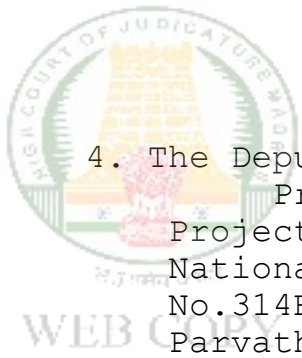
W.P. (MD) No.15632 of 2016:

R.Anbu Joe Marshal

... Petitioner

Vs.

- 1) Union of India,
Represented by its Secretary,
Department of Road Transport and Highways,
New Delhi.
- 2) The National Highways Authority of India,
Rep. by its Chairman,
G5 ad 6, Sector 10,
Dawarka, New Delhi 110 076
- 3) The Regional Manager,
Regional Office,
National Highways Authority of India,
Sri Tower, 3rd Floor,
DP34, Industrial Estate, Guindy,
Chennai 600 032



4. The Deputy General Manager-cum-
Project Director,
Project Implementation Unit,
National Highways Authority of India,
No.314E, K.P.Road, Near Ayyappan Koil,
Parvathipuram, Nagercoil 629 003
Kanniyakumari District
5. The Competent Authority /
Special District Revenue Officer,
(Land Acquisition) National Highways,
Tirunelveli, With Headquarters at
Observatory Street, Nagercoil,
Kanyakumari District.
6. The Special Tahsildar,
(Land Acquisition National Highways), Unit III,
Vilavancode,
at Thrithuvapuram,
Kuzhithurai, Kanyakumari District.
7. L.M.S.Church,
Chodukkavilai,
Palliyadi, Palliyadi Post,
Kanyakumari District, Pin 629 169
Rep. by its Secretary.

... Respondents

*** R7 is impleaded vide Court order dated 16.03.2018 in W.M.P. (MD) No.5413 of 2018.**

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 5th respondent, pertaining to his order in Na.Ka.J3/79/2016 dated 28.06.2016 on his file issued to the petitioner, consequently the records of the 1st respondent in its notification in S.O.1883(E) dated 26.05.2016 on its file, published in the Gazette of India, Extraordinary, Part II-Section 3-Subsection (ii) dated 26.05.2016 the consequential notification of the 1st respondent in S.O.145(E) dated 16.01.2017 on its file published in the Gazette of India Extraordinary Part II-Section 3-Subsection (ii) No.134 dated 16.01.2017 and the consequential notification of the fifth respondent in Roc.No.J3/79/2016, dated 17.03.2017, on his file, quash the said order dated 28.06.2016 of the fifth respondent in toto and the said notifications dated 26.05.2016 and 16.01.2017 of the first respondent and the said notification dated 17.03.2017 of the fifth respondent insofar as change of alignment of NH47 from that shown in the enclosures to the order of the 4th respondent in NHAI/PIU/KK/RTI/2010/1225 dated 14.09.2010 on his file, regarding survey No.1038/15 of Nattalam-A Village, Vilavancode Taluk,



Kanyakumari District is concerned, directing the respondents to forbear from proceeding further with land acquisition for, and construction of, NH47, as far as lands in the said survey numbers are concerned, except in accordance with the said enclosures to the said order dated 14.09.2010 of the fourth respondent.

*** Prayer amended vide Court Order dated 12.09.2017 in W.M.P. (MD) No.13770 of 2017.**

W.P. (MD) No.15644 of 2016:

P.Austin Jayakaran

... Petitioner

vs.

- 1) Union of India,
Represented by its Secretary,
Department of Road Transport and Highways,
New Delhi.
- 2) The National Highways Authority of India,
Rep. by its Chairman,
G5 ad 6, Sector 10,
Dawarka,
New Delhi 110 076
- 3) The Regional Manager,
Regional Office,
National Highways Authority of India,
Sri Tower, 3rd Floor,
DP34, Industrial Estate, Guindy,
Chennai 600 032
4. The Deputy General Manager-cum-
Project Director,
Project Implementation Unit,
National Highways Authority of India,
No.314E, K.P.Road, Near Ayyappan Koil,
Parvathipuram, Nagercoil 629 003
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5. The Competent Authority /
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(Land Acquisition) National Highways,
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Vilavancode,
at Thrithuvapuram,
Kuzhithurai, Kanyakumari District.

7. L.M.S.Church,
Chodukkavilai,
Palliyadi, Palliyadi Post,
Kanyakumari District, Pin 629 169
Rep. by its Secretary.

... Respondents

*** R7 is impleaded vide Court order dated 16.03.2018 in W.M.P. (MD) No.5414 of 2018.**

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 5th respondent, pertaining to his order in Na.Ka.J3/79/2016 dated 28.06.2016 on his file issued to the petitioner, consequently the records of the 1st respondent in its notification in S.O.1883(E) dated 26.05.2016 on its file, published in the Gazette of India, Extraordinary, Part II-Section 3-Subsection (ii) dated 26.05.2016 the consequential notification of the 1st respondent in S.O.145(E) dated 16.01.2017 on its file published in the Gazette of India Extraordinary Part II-Section 3-Subsection (ii) No.134 dated 16.01.2017 and the consequential notification of the fifth respondent in Roc.No.J3/79/2016, dated 17.03.2017, on his file, quash the said order dated 28.06.2016 of the fifth respondent in toto and the said notifications dated 26.05.2016 and 16.01.2017 of the first respondent and the said notification dated 17.03.2017 of the fifth respondent insofar as change of alignment of NH47 from that shown in the enclosures to the order of the 4th respondent in NHAI/PIU/KK/RTI/2010/1225 dated 14.09.2010 on his file, regarding survey No.1038/14 of Nattalam-A Village, Vilavancode Taluk, Kanyakumari District is concerned, directing the respondents to forbear from proceeding further with land acquisition for, and construction of, NH47, as far as lands in the said survey numbers are concerned, except in accordance with the said enclosures to the said order dated 14.09.2010 of the fourth respondent.

*** Prayer amended vide Court Order dated 12.09.2017 in W.M.P. (MD) No.13771 of 2017.**

In all the Writ Petitions:

For Petitioners: Mr.K.N.Thambi



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For R-1 : Mrs.S.Srimathy,
Central Government Counsel

For RR 2 to 4 : Mr.Su.Srinivasan,
Senior Central Government
Standing Counsel.

For RR 5 & 6 : Mr.M.Lingadurai,
Government Advocate

For R-7 : Mr.C.Godwin

COMMON ORDER

The subject matter of challenge in all these Writ Petitions, the grounds taken by the petitioners and the submissions made by the learned counsel appearing on either side are all common and hence, all these Writ Petitions are taken up together, heard and disposed of through this common order.

2. The petitioners in all these Writ Petitions, originally challenged the impugned order passed by the fifth respondent under Section 3-C(2) of the National Highways Act, 1956 (hereinafter referred to as the 'Act'), rejecting the objections made by the petitioners under Section 3-C(1) of the Act. The petitioners had also challenged the Notification issued by the first respondent under Section 3-A(1) of the Act, dated 26.05.2016. During the pendency of these Writ Petitions, the petitioners have also challenged the Notification issued by the first respondent under Section 3-D(1) of the Act, dated 16.01.2017 declaring the acquisition of lands and the consequential Notification of the fifth respondent under Section 3-G(3) of the Act, dated 17.03.2017 calling upon the petitioners to attend enquiry for determination of the compensation.

3. The brief facts of the case are as follows:-

3.1. The petitioners are the owners of the subject property under each Writ Petition. The **N**ational **H**ighways **A**uthority of **I**ndia [hereinafter referred to as 'N.H.A.I.'] wanted to develop the existing Two-Lane Road to a Four-Lane Road at NH47 from Villukuri to Kanyakumari District. Accordingly, Notification for lands among others situated in S.Nos.1038/1 to 1038/15 & 1038/22 with other survey numbers of Nattalam Village, Kanyakumari District was published under Section 3-A(1) of the Act in the Gazette on 26.05.2016 declaring the intention to acquire those lands. The substance of the Notification was also published in two local dailies on 05.06.2016. This Notification was issued based on the final decision taken after a thorough study of the **D**etailed **P**roject **R**eport [hereinafter referred to as 'D.P.R.']. The final alignment while going ahead with the Project was based on the report given by



the experts, who had examined the technical feasibility of the Project.

3.2. Immediately after the Central Government expressed its intention to acquire the lands by publishing the Notification, the petitioners gave their objections under Section 3-C(1) of the Act on 07.06.2016 and 09.06.2016 respectively. The petitioners were called for the enquiry and ultimately, the objections made by the petitioners came to be rejected by the fifth respondent under Section 3-C(2) of the Act, through proceedings dated 28.06.2016.

3.3. As a consequence to the above order, a Notification was published in the Gazette under Section 3-D(1) of the Act on 16.01.2017 whereby, the Central Government declared that the lands belonging to the petitioners and others should be acquired for the purposes mentioned in Section 3-A(1) of the Act. Thereby, the lands vested absolutely in the Central Government by virtue of Section 3-D (2) of the Act. Thereafter, the fifth respondent issued a public notice under Section 3-G(3) of the Act calling the petitioners and other interested persons for enquiry to determine the amount of compensation payable to them. Aggrieved by the same, all these Writ Petitions have been filed before this Court.

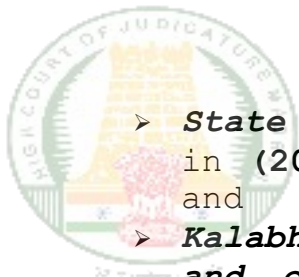
4. Submissions made by Mr.K.N.Thambi, Learned Counsel for the Petitioners:

4.1. Immediately after the petitioners came to know that steps are being taken to acquire the lands, they obtained information from N.H.A.I by way of filing an application under the R.T.I. (**Right To Information**) Act and there was an approved alignment as early as in the year 2010 itself and they were informed that there will be no change in the approved alignment at Nattalam Village.

4.2. Based on the assurance given by the N.H.A.I., the petitioners acted upon the same and had put up constructions by spending a lot of money in those portions of the property which was not considered for acquisition when the original alignment was approved.

4.3. There was interference from an M.L.A. (**Member of Legislative Assembly**) and there was also pressure from the seventh respondent Church and as a result of the same, the entire alignment was changed and the entire properties belonging to the petitioners are sought to be acquired.

4.4. The respondents have acted in favour of the seventh respondent Church based on the interference made by the M.L.A. and therefore, there is a legal malice which vitiates the entire acquisition proceedings. To substantiate this submission, the learned counsel relied upon the following judgments:-



- **State of A.P. and others vs. Goverdhanlal Pitti** reported in (2003) 4 SCC 739 (relevant paragraph Nos.12 & 13); and
- **Kalabharati Advertising vs. Hemant Vimalnath Narichania and others** reported in (2010) 9 SCC 437 (relevant paragraph No. 25).

4.5. The objections given by the petitioners were rejected in a mechanical fashion without any application of mind and each of the objection order was stereo-type, which goes against the object of conducting an enquiry under Section 3-C(1) of the Act. To substantiate this submission, the learned counsel relied upon the judgment of the Division Bench of this Court in **R.Natarajan and others vs. Union of India** reported in (2010) 6 CTC 337.

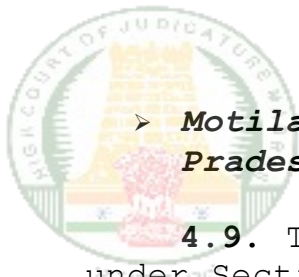
4.6. The petitioners were called for an enquiry on 14.06.2016 and on that day, some signatures were obtained from the petitioners and there was no personal enquiry. However, the impugned order passed by the fifth respondent under Section 3-C(2) of the Act shows as if an enquiry was conducted on 27.06.2016. Neither was any notice served on the petitioners informing about the date of enquiry on 27.06.2016 nor was any enquiry actually conducted on 27.06.2016. There is absolutely no explanation on the part of the respondents even in the counter affidavit for this specific ground that has been taken by the petitioners. Therefore, the entire enquiry is a farce and it is liable to be interfered for violation of the Principles of Natural Justice.

4.7. The respondents have attempted to improve their case in the counter affidavit and reasons have been assigned which does not form part of the original impugned order passed by the fifth respondent. The impugned order must be tested only based on what has been stated in the order and not based on what explanation is being given in the counter affidavit. To substantiate this submission, the learned counsel for the petitioners relied upon the following judgments:-

- **Mohinder Singh Gill and another vs. Chief Election Commissioner, New Delhi and others** reported in (1978) 1 SCC 405; and
- **Chandra Singh and others vs. State of Rajasthan and another** reported in (2003) 6 SCC 545.

4.8. The petitioners, based on the promise made by the N.H.A.I., regarding the original alignment, had altered their positions and therefore, the subsequent change of alignment and the Notification issued by the first respondent is hit by the Principles of Promissory Estoppel. To substantiate this submission, the learned counsel for the petitioners relied upon the following judgments:-

- **Delhi Cloth & General Mills Ltd., vs. Union of India** reported in AIR (1987) SC 2414; and



➤ **Motilal Padampat Sugar Mills Co.Ltd., vs. State of Uttar Pradesh and others** reported in AIR (1979) SC 621.

4.9. The petitioners, who are guaranteed a Constitutional Right under Section 300 A of the Constitution of India, cannot be deprived of their property without the Authority of Law. Hence, the entire acquisition proceedings is liable to be interfered by this Court.

5. Submissions made by Mr.Su.Srinivasan, learned Senior Central Government Standing Counsel appearing on behalf of Respondents 2 to 4:

5.1. There was only one Notification that was issued by the first respondent under Section 3-A(1) of the Act and it covered the final alignment that was approved by D.P.R. and sanctioned / accepted by the Government. Once the alignment got the approval of the first respondent, there was subsequently no change in alignment.

5.2. The reports and information through R.T.I. relied upon by the petitioners pertained to the stage of preparation which was always subject to changes and therefore, it cannot be alleged that the petitioners were informed about the finalised alignment and subsequently, the same was changed at the time of issuing the Notification.

5.3. There was no interference from any M.L.A. and there was no pressure exerted by the seventh respondent Church. The concerned M.L.A. belonging to the Constituency had merely forwarded the representation given by the seventh respondent Church. The same was considered by the respondents in line with Clause 1.4 of the Manual for Survey, Investigation and Preparation of Road Projects. Since there was a prescription to choose the location steering clear of any place of worship, the same was considered and a decision was taken and therefore, there are absolutely no malafides as alleged by the petitioners. Hence, the plea of legal malice is unsustainable.

5.4. The final alignment was approved only on 07.09.2015 by the Project Director of N.H.A.I. and the Notification under Section 3-A (1) of the Act was issued based on this final alignment. Therefore, the petitioners cannot rely upon some information received by them before the final alignment and there was no promise made to the petitioners about alignment. Hence, there is no question of applying the Principles of Promissory Estoppel.

5.5. The petitioners are attempting to project as if the entire alignment was changed only to accommodate the seventh respondent Church, whereas the comparison between the difference in the tentative area that was taken into consideration at the D.P.R. stage and the final area that was brought within the 3-A(1) Notification, after physical verification shows that, in Nattalam Village it was 9800 sq.m. as against 11654 sq.m and in Nattalam-A Village, it was



119940 sq.m. as against 125987 sq.m. This itself will establish that the ground taken by the petitioners as if N.H.A.I changed the entire acquisition for the sake of the seventh respondent Church, is unsustainable.

5.6. The learned Senior Central Government Standing Counsel also relied upon the report of the Advocate Commissioners appointed by this Court, who were assisted by Experts and submitted that the re-alignment is in accordance with the Highway Geometric Designs, Specifications and Guidelines published by the Indian Roads Congress (I.R.C.) and Ministry of Road Transport and Highways (MoRTH) .

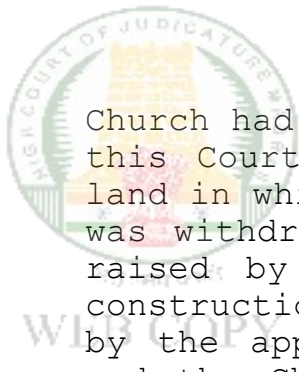
5.7. Insofar as the objections raised on the enquiry conducted under Section 3-C(1) of the Act, it was submitted that the fifth respondent took note of the objections made by the petitioners and also the response made by the Project Director, N.H.A.I. and had rejected the objections which satisfies the requirements of the provision. To substantiate this submission, the learned Senior Central Government Standing Counsel relied upon the following judgments:-

- **Sam Hiring Co. vs. A.R.Bhujbal and others** reported in (1996) 8 SCC 18;
- **Competent Authority vs. Barangore Jute Factory and others** reported in (2005) 13 SCC 477;
- **Union of India vs. Kushala Shetty and others** reported in (2011) 12 SCC 69;
- **Girias Investment Private Limited and another vs. State of Karnataka and others** reported in (2008) 7 SCC 53;
- **Ramniklal N.Bhutta and another vs. State of Maharashtra and others** reported in (1997) 1 SCC 134; and
- **Sanjeev Kumar Sharma and others vs. Union of India and others** in W.P.(C) No.24023 of 2011 dated 24.04.2013 before the Orissa High Court.

5.8. More than 90 % of the Project has been completed and the Government has already spent nearly Rupees One Thousand Three Hundred crores. Due to the pendency of these Writ Petitions, the N.H.A.I. is not able to complete the work for a distance of one and a half kilometres and thereby, the pendency of these Writ Petitions have prevented the Central Government from effectively implementing the Project which was made in public interest.

6. Mr.M.Lingadurai, learned Government Advocate appearing on behalf of the respondents 5 and 6, adopted the arguments made by Mr.Su.Srinivasan, learned Senior Central Government Standing Counsel, appearing on behalf of respondents 2 to 4.

7. Mr.C.Godwin, learned counsel appearing on behalf of the seventh respondent Church submitted that the seventh respondent



Church had earlier given objections and filed a Writ Petition before this Court. However, since the objections were considered and the land in which the Church is situated was exempted, the Writ Petition was withdrawn. The learned counsel further submitted that the plea raised by the petitioners as if the Church is an unauthorised construction, is wholly unsustainable since the sanction was given by the appropriate Authority through proceedings dated 02.06.2000 and the Church was dedicated to the general public on 12.09.2009 after demolishing the old structure. The learned counsel submitted that the seventh respondent Church did not exert any pressure and they only made an objection on the ground that the relevant Manual prescribes for leaving out certain places while acquiring the property and one such place is a 'place of worship'.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. Before going into the issues that have been raised by the petitioners, this Court is reminded of the observations made by the Hon'ble Supreme Court in **Ramniklal N.Bhutta and another vs. State of Maharashtra and others** reported in (1997) 1 SCC 134. To appreciate the same, the relevant portion is extracted hereunder:

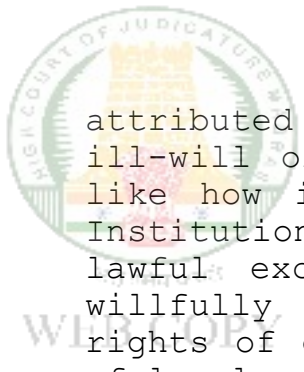
"10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with china economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenge the acquisition proceedings in courts. These challenges are generally in shape of writ petitions filed on High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power or grant in



stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 -indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lumpsum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings."

10. The Hon'ble Supreme Court was expressing its anguish in the manner in which acquisition proceedings are being stalled and delayed due to repeated interference made by Courts at every stage of acquisition. The Hon'ble Supreme Court held that without a strong infrastructure, this country can never make any progress. The Hon'ble Supreme Court also sounded a word of 'caution', where it was held that acquisition proceedings would require interference where it is vitiated on account of non-compliance of legal requirements. The power under Article 226 of the Constitution of India should be sparingly exercised in land acquisition proceedings since it involves a larger public interest. This is yet another case where, the acquisition proceedings of a small extent has been stalled for the last five years and the Government, having spent a huge amount of money of nearly Rupees One Thousand Three Hundred Crores and after having completed a major part of the Project, is not able to implement the Project and put the Highways into effective use, due to the pendency of these Writ Petitions.

11. The petitioners have raised three main grounds questioning the acquisition proceedings. The first ground that has been raised by the petitioners is the ground of legal malice. The 'legal malice' or 'malice in law', is a ground that is normally taken when it is

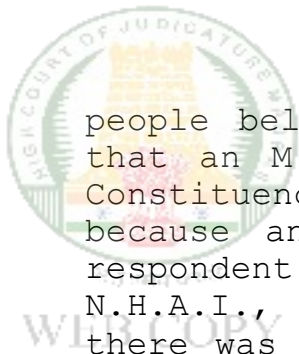


attributed to the action of a State. In all such cases, personal ill-will or spite cannot be attributed on the part of the State, like how it gets attributed when it comes to Individuals and Institutions. In cases where the State does something without a lawful excuse or in other words, an act done wrongfully and willfully without reasonable or probable cause disregarding the rights of others, the act of the State gets vitiated on the ground of legal malice.

12. The petitioners are attempting to attribute legal malice on the ground that originally, there was an approved alignment which subsequently was altered to suit the needs of the seventh respondent Church and based on the pressure that was exerted by an M.L.A. In order to substantiate this ground, the petitioners are relying upon various communications found at page numbers 1 to 43 of the common typed set of papers.

13. This Court is really surprised as to how N.H.A.I. is providing certain details under the R.T.I. Act pertaining to the preparation of a Project report to acquire lands for establishing Highways. Before any acquisition proceedings are undertaken, it involves a lot of ground work and preparation of Project reports based on the inputs given by the Experts. In the course of preparing the Project report, it will always be subjected to changes and modifications. What ultimately comes out at the time when the Notification is published under Section 3-A(1) of the Act is the finalised alignment that is approved by the Central Government based on which, acquisition proceedings are initiated. Therefore, the N.H.A.I. should not be providing any information to anyone under the R.T.I. Act till the D.P.R. is finalized and approved by the Central Government and a Notification is issued under the Act. If information is provided, in the manner in which it has happened in the present case, obviously, the acquisition proceedings will be stalled and persons will start knocking the doors of this Court even before the Notification is published. It is therefore, made very clear that N.H.A.I. should not be divulging information when the Project is at the preparatory stage.

14. The petitioners are trying to build up their case based on the communications that are found in the common typed set of papers from page numbers 1 to 43. A careful reading of all the documents relied upon by the petitioners, shows that the communications were made at the time when the Project was at the preparatory stage. Insofar as the allegation made against the sitting M.L.A. of the relevant Constituency is concerned, this Court does not find any ground to sustain this allegation. An elected representative keeps receiving various requests from the people belonging to his or her Constituency and many times, they forward such requests to the concerned Authorities, if they find it reasonable. After all, a person gets elected as an M.L.A. only based on the mandate of the



people belonging to the Constituency and therefore, it is natural that an M.L.A. will always try to help persons belonging to the Constituency when they come seeking for help. Therefore, just because an elected representative was approached by the seventh respondent Church and the request was forwarded by the M.L.A. to N.H.A.I., that does not automatically result in an assumption that there was a political pressure to change the alignment. *Clause 1.4* of the Manual for Survey, Investigation and Preparation of Road Projects, provides as follows:-

"Guiding Principles Covering Route Selection and Highway

Location:

I. General

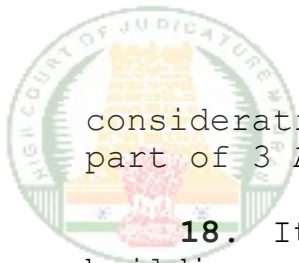
....

1.4. The location should steer clear of obstruction, such as, cemeteries, burning ghats, places of worship, archaeological and historical monuments, and as far as possible, from public facilities, like, hospitals, schools, play grounds, etc. "

15. It is clear from the above that there is a guiding principle where the Project must attempt to steer clear of obstructions such as 'places of worship'. Therefore, it is not unnatural or extraordinary when N.H.A.I was considering the request made by the seventh respondent Church.

16. It is seen from the records that the modified alignment was forwarded by the General Manager of N.H.A.I to the Chief General Manager of N.H.A.I and thereafter, it was also considered by the Central Government and it was found to be feasible to exempt the lands belonging to the Church from the acquisition proceedings. This Court is of the considered view that, the modification of the alignment did not take place only because the lands belonging to the Church was exempted.

17. The notice of this Court was also drawn to the statement that was prepared between of tentative area as per the D.P.R. and the area that was ultimately forming part of the 3-A Notification. It is found that in Nattalam Village, as against the tentative area of 11654 sq.m., what was ultimately forming part of the 3-A Notification was only 9800 sq.m. Similarly, in Nattalam-A Village, as against the tentative area of 125987 sq.m. what was ultimately forming part of the 3-A Notification was only 119940 sq.m. It is also seen from the report of the Special Tahsildar that as per the original alignment, 20 houses came within the D.P.R. and after the final alignment, this number went up to 26 houses. Similarly, ten shops came within the initial alignment and after the final alignment, it came down to two shops. That apart, the final alignment also excluded the place of worship, namely the seventh respondent Church. Therefore, there was a lot of balancing that had taken place between the original alignment when it was under



consideration in D.P.R. stage and the final alignment which forms part of 3 A(1) Notification.

18. It is therefore clear that there were lots of lands and buildings that were exempted when the final Notification was published. Exemption that was granted to the seventh respondent Church is attempted to be blown out of proportion by the petitioners and this Court is not really impressed since the exemption was forming part of various other exemptions that were given to other land owners also.

19. Taking into consideration, the seriousness of the allegations made by the petitioners, this Court, by an order dated 11.10.2017 appointed two Advocate Commissioners to inspect the lands in the presence of Experts, who were also selected by this Court. Accordingly, an Inspection was conducted and an expert opinion was given to this Court along with the report of the Advocate Commissioners. It will be relevant to extract the opinion of the Experts here under:

"13. Site Inspection

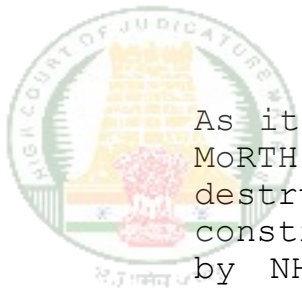
In this regard, a filed visit was undertaken on 4th of November 2017 by the following members of the Committee along with the petitioner, NHAI officials and Revenue Officials.

- 1) Dr. Avijit Maji, Associate Professor, IIT Bombay
- 2) Mr. J. Barathan, Advocate, Madurai Bench of Madras High Court, Madurai.
- 3) Mr. M. P. Senthil, Advocate, Madurai Bench of Madras High Court, Madurai.
- 4) Er. T. Ramaswamy, Superintending Engineer, Highways (Retd.), Coimbatore.
- 5) Mr. M. Muthudayar, Project Director, PIU Nagercoil, N.H.A.I

14. Submissions made by N.H.A.I before the committee during Field inspection

The work for preparation of Detailed Project Report (DPR) for this project was awarded to M/s. SECON Pvt. Ltd., Bangalore in the year 2004 by NHAI, HQ, New Delhi. M/s. SECON Pvt. Ltd., was entrusted to prepare the DPR comprising, but not excluding, the preparation of alignment plan for the proposed highway, feasibility study, Pavement crust thickness, project details and others.

Accordingly, M/s. SECON Pvt. Ltd. had submitted the detailed project report in 2008 to NHAI, HQ, Delhi. It was observed in the NHAI, HQ that, this alignment at particular location in Nattalam - A Village is affecting the religious structure at the proposed project chainage KM 56+479 as per the alignment plan.



As it has been the policy of the Government of India and MoRTH and NHAI, to avoid to the maximum extent the destruction/removal of religious structures for the construction of highways in this country, it was decided by NHAI to explore the possibility of realignment to prevent the demolition of a religious structure in question at Nattalam -A Village.

Accordingly, M/s.SECON Pvt. Ltd., after making the detailed site inspection and discussions, had submitted the revised alignment of the project in 2015 to the NHAI which was subsequently approved by the NHAI.

This alignment option was observed to be realigned and saved the demolition of religious structure and also found to be confirming to all the highway geometric design specifications and guidelines published by the IRC and MoRTH.

Accordingly, the DPR including the details as mentioned above was accepted and was subjected to other processes like tendering and selection of contractor.

15. Observations of Dr.Avijit Maji

After hearing all the submissions made by the NHAI, I Avijit Maji, visited the site and verified the alignment plan presently being followed for the construction of highway. It is noted that the alignment presently being followed (i.e. the realignment plan submitted by M/s.SECON Pvt. Ltd., to the NHAI 2015) is in compliance with the highway geometric design specifications and guidelines published by the IRC and MoRTH and that it is safe for the road uses.

Regarding the main contention of the petitioners that the original alignment was straight with no horizontal curves and the new alignment was with horizontal curves, it is noted that (both original and the new) alignments have curves. As per the highway geometric design specifications and guidelines published by the IRC and MoRTH, there was no requirements of a long straight highway alignment. Curves in highways help to break the monotony in driving and hence should be considered along with the tangent (straight) sections to provide curvilinear highway alignment. One of the highway geometric design specifications and guidelines published by the IRC, IRC: 73-1980 (Geometric Design Standards for Rural Highways), recommends "A curvilinear alignment with long curves is better from the point of safety and aesthetics".

16. Conclusions and recommendations

From the foregoing submission, it is to humbly submit to the Hon'ble Court that the realignment as accepted and being followed for construction by the NHAI (submitted by M/s.SECON Pvt. Ltd., in the year 2015 to the NHAI,



HQ) is found to be satisfying the highway geometric design specifications and guidelines published by the IRC and MoRTH."

20. It is clear from the above report that the re-alignment satisfies all specifications and guidelines and there is nothing to hold against such an expert opinion. This Court must bear in mind that these are areas of expertise where, this Court should not be sitting on judgment. An independent Expert opinion has now been obtained by this Court to clear its doubts on the allegations made by the petitioners. In view of the above findings, there is no legal malice on the part of the respondents and this issue is answered accordingly.

21. The next issue that has been raised by the learned counsel for the petitioners is on the Principle of Promissory Estoppel. According to the petitioners, they were given to understand that an alignment has been approved and they accordingly altered their position and therefore, the respondents cannot act to the prejudice of the petitioners and they are bound by the Principles of Promissory Estoppel.

22. The Doctrine of Promissory Estoppel stems from equitable doctrine. The law is now well settled to the effect that one party must through words or conduct made to the other, a clear and unequivocal promise and the other party must have acted upon the same and altered his position. Thereafter, the party who made the promise will not be permitted to go back on the promise to the detriment of the other. In the present case, the petitioners are claiming that they acted on the original promise made by N.H.A.I and altered their position by utilising the property spending a lot of money and the subsequent re-alignment made by the respondents, cannot be permitted on the ground of Promissory Estoppel.

23. This ground taken by the petitioners does not hold any water. There was no promise made to the petitioners regarding the alignment. The petitioners were only getting information when the Project was at its preparatory stage. Any Project at the nascent stage gets evolved and finally gets approved and during those stages, it will always be subject to changes and modifications. In the present case, the final D.P.R. was approved only on 7.09.2015 by the Chief General Manager of N.H.A.I. and this was ultimately forwarded to the Central Government. Till that date, there was no promise made to the petitioners that the alignment is going to happen only in a particular way. In fact, the alignment gets confirmed only after the Notification is issued by the Central Government under Section 3-A(1) of the Act. Admittedly, there was no re-alignment after the publication of the Notification. Hence, there is no question of applying the Principles of Promissory Estoppel in



the present case and the second ground raised by the petitioners is answered accordingly.

24. The last ground that has been raised by the petitioners is with regard to the enquiry conducted under Section 3-C(1) of the Act. It will be relevant to place reliance upon some of the judgments of the Hon'ble Supreme Court in this regard.

- The Hon'ble Supreme court in the case of **Sam Hiring Co. vs. A.R.Bhujbal and others** reported in (1996) 8 SCC 18 held as follows:

"3. Shri S.K. Dholakia, the learned senior counsel for the appellant, has contended that by operation of the provisions of Section 2(7) read with Section 2(9), the building in occupation of the appellant is non-cess payable building. Consequently, the building which is in exclusive possession in Chapter VIII, is not liable to be proceeded with, if the value of the reconstruction is Rs.500/- per sq.mt. or below. Since a certificate in that behalf has already- been issued in support thereof, the action taken for demolition and acquisition is not according to law. After the report submitted by the Executive Engineer, the Land Acquisition Officer had not given any independent hearing nor called the Executive Engineer for cross-examination. Therefore it is violative of the principles of natural justice. The third contention raised is that the Land Acquisition Officer should have considered all the objections and given finding on each of the objections before submitting his proposal for further action. Shri M.L. Verma, the learned senior counsel resisted all these contentions.

....

5. The question then is: whether the appellant is entitled to the further hearing? After the report was submitted by the Executive Engineer with regard to the objections raised by the appellant, the Division Bench of the High Court has pointed out that the Land Acquisition Officer had considered the objections after hearing him and with a view to satisfy himself whether the objections raised by the appellant were tenable, he required factual material and so he called for the report from the Executive Engineer. The Executive Engineer's report was submitted clearing the position and the finding is not adverse to the appellant but beneficial to him. Therefore, the need to give further opportunity does not arise nor is there any need to call the Executive Engineer for cross-examination. Accordingly, the principle of natural justice has not been violated.



6. The Land Acquisition Officer is not a judicial authority or a quasi-judicial authority. He exercised the power under Section 5-A as an administrative authority. But the Act requires that he should consider the objections and, if asked, to give an opportunity of hearing. In this case, opportunity of hearing was given and the objections raised were considered. The principle of natural justice has been complied with. He was not required to elaborately deal with each of the objections and submit the report. Considered from this perspective, we do not think that there is any error of law warranting interference."

- The Hon'ble Supreme Court in **Competent Authority vs. Barangore Jute Factory and others** reported in (2005) 13 SCC 477 has held as follows:

" The absence of plan also renders the right to file objections under Section 3C(1) nugatory. In the absence of a Plan, it is impossible to ascertain or know which part of acquired land was to be used and in what manner. Without this knowledge no objections regarding use of land could be filed. Since the objection regarding use of the land had been given up by the writ petitioners, we need not go any further in this aspect. We would, however, like to add that unlike Section 5A of the Land Acquisition Act, 1894 which confers a general right to object to acquisition of land under Section 4 of the said Act, Section 3C(1) of the National Highways Act gives a very limited right to object. The objection can be only to the use of the land under acquisition for purposes other than those under sub-section 3A(1). The Act confers no right to object to acquisition as such. This answers the argument advanced by the learned counsel for the NHAI that failure to file objections disentitles Writ Petitioners to object to the acquisition. The Act confers no general right to object, therefore, failure to object becomes irrelevant. The learned counsel relied on the judgment of this court in *Delhi Administration vs. Gurdip Singh Uban & Others* [(1999) 7 SCC 44]. In our view, this judgment has no application in the facts of the present case where right to object is a very limited right. The case cited is a case under the Land Acquisition Act, 1894 which confers a general right to object to acquisition of land under Section 5A. Failure to exercise that right could be said to be acquiescence. The National Highways Act confers no such right. Under this Act there is no right to object to acquisition of land except on the question of its user. Therefore, the present objection has to be decided independently of the right to file objections. De hors



the right to file objection, the validity of the Notification has to be considered. Failure to file objection to the notification under Section 3C, therefore, cannot non-suit the Writ Petitioners in this case."

- The Hon'ble Supreme Court in **Union of India vs. Kushala Shetty and others** reported in **AIR 2011 SC 3210** held as follows:

"6. The Central Government accepted the report submitted by the Competent Authority and issued notification dated 8.8.2006 under Section 3D(1) of the 1956 Act. In the meanwhile, Shri Arun Kumar Shetty and 11 others filed Writ Petition No.8780 of 2006 with the prayer that the respondents therein may be directed to consider their objections dated 4.10.2005 and representations dated 21.11.2005 and 15.5.2006 within a fixed period. Their grievance was that the objections and representations made by them against the proposed acquisition of their land have not been decided by the Competent Authority.

.....

16. Shri Vivek Tankha, learned Additional Solicitor General appearing for NHA, referred to the scheme of Sections 3A to 3I of the 1956 Act and order dated 11.10.2005 passed by the Competent Authority and argued that the Division Bench committed serious error by partially quashing the acquisition proceedings only on the ground that the order passed on the objections filed by some of the land owners had not been communicated to them before issue of notification under Section 3D. Shri Tankha emphasized that the objections filed by the land owners were duly considered and rejected by the Competent Authority and the mere fact that the order of rejection was communicated to some of them after the issue of notification dated 8.8.2006 did not justify a conclusion that the acquisition proceedings were ultra vires the provisions of the 1956 Act. He submitted that the High Court should not have partially quashed notifications dated 10.8.2005 and 8.8.2006 by ignoring the fact that majority of the land owners have already received compensation and the acquired land had been utilised for the purpose specified in notification dated 10.8.2005.

.....

20. The scheme of acquisition enshrined in the above reproduced provisions makes it clear that once the Central Government is satisfied that any land is required for the building, maintenance, management or operation of a national highway or part thereof, then, it shall declare its intention to acquire such land by issuing a



notification in the official Gazette giving brief description of the land. The substance of the notification is also required to be published in two local newspapers of which one has to be in a vernacular language. Any person interested in the land can file objection within 21 days from the date of publication of the notification in the official Gazette. Such objection is required to be made to the Competent Authority in writing. Thereafter, the Competent Authority is required to give the objector an opportunity of hearing either in person or through a legal practitioner. This exercise is to be followed by an order of the Competent Authority either allowing or rejecting the objections.

21. Where no objection is made to the Competent Authority in terms of Section 3C(1) or where the objections made by the interested persons have been disallowed, the Competent Authority is required to submit a report to the Central Government, which shall then issue a notification in the official Gazette that the land should be acquired for the purpose or purposes mentioned in Section 3A(1). On publication of declaration under Section 3D(1), the land vests absolutely in the Central Government free from all encumbrances. Sub-section (3) of Section 3D provides that where no declaration under sub-section (1) is published within a period of one year from the date of publication of notification under Section 3A(1), the said notification shall cease to have any effect. By virtue of proviso to Section 3D(3), the period during which any action or proceeding taken in pursuance of notification issued under Section 3A(1) remains stayed by a Court shall be excluded while computing the period of one year specified in Section 3D(3).

22. In this case, notification dated 10.8.2005, which was published in the official Gazette of the same date and of which substance was published in two local newspapers, contained full description of the land proposed to be acquired for widening three National Highways. The names of the villages in which the land proposed to be acquired was situated, the survey numbers including sub-survey numbers, the nature, type and area of the land were also given in the schedule appended to the notification. Not only this, it was clearly mentioned that land plans and other details of the land are available in the office of the Competent Authority. This is the reason why none of the land owners (including the respondents) made any grievance that the notification issued under Section 3A(1) of the 1956 Act was vague or



that due to lack of particulars/details, they were prevented from effectively exercising their right to file objections in terms of Section 3C(1). Of course, a grievance of this score was made in the objections dated 16.10.2006 filed by some of the land owners of Padavu Village, but that was clearly an afterthought and, in any case, the same did not require consideration because of non-adherence to the time schedule specified in Section 3C(1) of the 1956 Act.

23. The only reason assigned by the Division Bench of the High Court for upsetting the well considered order passed by the learned Single Judge negating the respondents' challenge to the acquisition was that declaration under Section 3D(1) was published even before communication of the decision taken by the Competent Authority in terms of Section 3C(2). The process of reasoning adopted by the Division Bench for recording its conclusion appears to have been influenced by an assumption that the objections filed by the land owners had not been decided till the issue of declaration under Section 3D(1). However, the fact of the matter is that the Competent Authority had, after giving opportunity of personal hearing to the objectors, passed order dated 11.10.2005 and rejected the objections. Though, that order was not crafted like a judicial order which is passed by a legally trained mind, the rejection of the representations made by the respondents cannot be faulted only on that ground.

24. The Competent Authority did advert to the substance of objections, the details of which have been incorporated in Annexure P-3 filed before this Court. The concerned officer rejected the same by observing that the land proposed for acquisition is necessary for widening the existing National Highways into four lanes. If the consideration made by the Competent Authority is judged in the backdrop of the fact that a Special Purpose Vehicle was incorporated with the name New Mangalore Port Road Company Limited for implementation of the project known as New Mangalore Port Road Connectivity Project from Surathkal to Nantoor and B.C.Road to Padil along with bypass from Nantoor to Padil, it is not possible to castigate the proved reasons recorded by the Competent Authority for rejecting the objections."

25. In the present case, the petitioners have submitted their objections on 7.06.2016 and 9.06.2016 respectively. It is seen from the impugned order passed by the fifth respondent, dated 28.06.2016 that the respondent has taken into account the objections made by



the petitioners and the response given by the Project Director of N.H.A.I and has rendered the following findings:

“மேற்படி சட்டம் பிரிவு 3C(1) – ன் படி அறிவிக் கை நாஸ்திதழில் ளெளியான தேதீயிலருந்து 21 நாட்களுக்குள் வரப் பெற்ற ஆட்சேபனை மனுக்களின் மீது 27.06.2016 அன்று அதிகாரம் பெற்ற அலுவலர் மற்றும் சிறப்பு மாவட்ட வருவாய் அலுவலர் அவர்களால் நேரடி விசாரணை செய்யப் பட்டது.

மேலும் பார்வை 3 – ல் காணும் கடிதத்தின் படி ஆட்சேபனை மனுக்கள் மீது தேசிய நெடுஞ்சாலை அதிகார குழுமத்தினரின் கருத்துரையையும் ஆட்சேபதாரரின் வாக்கு முடித்தையும் பரிசீலனை செய்த பின்னர் தேசிய நெடுஞ்சாலை சட்டம் 1956 பிரிவு 3C(2) – ன் படி ஆட்சேபனை மனு கீழ்க்கண்ட காரணங்களால் தள்ளுபடி செய்து உத்திரவிடப்படுகிறது.

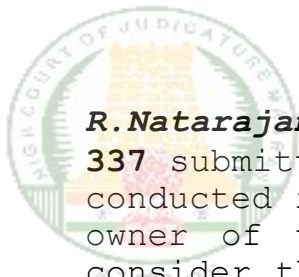
1. தேசிய நெடுஞ்சாலை அமைக்கும் பணி தேசிய முக்கியத்துவம் வாய்ந்தது.
2. ஏற்கெனவே இந்திய அரசால் ஒப்புதல் செய்யப் பட்டு நிர்ணயிக்கப்பட்ட திட்ட பாதையினை மாற்ற இயலாது.
3. மனுதாரரின் நிலம் தேசிய நெடுஞ்சாலையின் நான்கு வழிச்சாலை அமைக்க மிக மிக அத்தியவசியமான ஒன்று. ஏனவே நில எடுப்பு தவிற்க இயலாது.
4. இழப்பீட்டுத் தொகை குறித்து 3ழு(3) விசாரணையின் போது அரசு விதிமுறைகளுக்கு உட்பட்டு முடிவு செய்யப்படும்.”

26. The main grievance of the petitioners is that they were asked to attend an enquiry on 14.06.2016 and no enquiry was conducted on that date and the impugned order reads as if an enquiry was conducted on 27.06.2016 for which the petitioners were not given any notice and no such enquiry actually took place.

27. The learned Senior Central Government Standing counsel appearing on behalf of the respondents 2 to 4 submitted that the fifth respondent on 27.06.2016 had taken into consideration the objections given by the petitioners and the response of the Project Director, N.H.A.I and has assigned the reasons for rejecting the objections made by the petitioners. The learned counsel submitted that the procedure adopted by the fifth respondent is sufficiently in compliance with Section 3-C(1) of the Act.

28. This Court finds that the petitioners were given sufficient opportunity and their objections were considered and therefore, there is no violation of the Principles of Natural Justice, as alleged by the petitioners.

29. The learned counsel for the petitioners, by placing reliance upon the judgement of the Division Bench of this Court in <https://hcservices.ecourts.gov.in/hcservices/>



R.Natarajan and others vs. Union of India reported in (2010) 6 CTC 337 submitted that an enquiry under Section 3-C of the Act cannot be conducted in a mechanical fashion since it involves the right of the owner of the property. It was submitted that the Authority must consider the objections and deal with the same before rejecting the objections. However, in the present case, a cyclostyled order has been passed for all the petitioners and that itself shows that there was a total non-application of mind.

30. The Division Bench, while dealing with the issue, had taken the cue from the judgment of the Hon'ble Supreme Court which dealt with the scope of enquiry under Section 5-A of the Land Acquisition Act, 1894. On a careful reading of the judgment of the Hon'ble Supreme Court in **Competent Authority's case** (cited supra), it is seen that there is a marked difference in conducting an enquiry under Section 5-A of the Land Acquisition Act, 1894 and Section 3-C (1) of the Act. The Hon'ble Supreme Court categorically held that Section 3-C(1) of the Act gives a very limited right to object and such objections can be made only with regard to the use of the land under acquisition for purpose other than those under Section 3-A(1) of the Act. Therefore, the scope of enquiry under Section 5-A of the Land Acquisition Act, 1894 cannot be directly imported while considering the scope of enquiry under Section 3-C(1) of the Act.

31. It is also seen from the judgment of the Hon'ble Supreme Court in **Kushalal Shetty's case** (cited supra) that an Authority under this Act cannot advert to the objections and render an order like a judicial order, which is passed by a legally trained mind. What is required to be seen is as to whether the objections given by the petitioners and the explanation given by the Project Director, N.H.A.I. was taken into consideration at the time of passing the order. The fifth respondent cannot be faulted for rendering the same findings with respect to all the petitioners since they had raised similar objections. The main objections that were raised by the petitioners was with regard to malafide exercise of power and modification of the alignment and on considering those objections, the fifth respondent has held that there is no scope for changing the alignment after the same has been approved by the Central Government. It was further held that the properties belonging to the petitioners are very much required for the purpose of establishing the Four-Lane Road. Considering the importance of the Project and also of the fact that major part of the Project has already been completed, this Court does not find any valid and strong reasons to interfere with the order passed by the fifth respondent, rejecting the objections made by the petitioners.

32. The petitioners have already been directed to attend the enquiry for determination of the compensation. Therefore, whatever asset is lost by the petitioners, will always be taken into account at the time of determination of the compensation. This process must



be completed as expeditiously as possible since for a stretch of one and a half kilometres that has been stalled due to the pendency of these Writ Petitions, the entire project is waiting for its effective implementation.

33. The above discussion leads this Court to an unescapable conclusion that there is no ground to interfere with the acquisition proceedings initiated by the respondents and this Court does not find any merits in these Writ Petitions and accordingly, all the Writ Petitions stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(P & A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sts

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 Secretary,
Department of Road Transport and Highways, New Delhi.
- 2) The Chairman,
National Highways Authority of India,
G5 ad 6, Sector 10,
Dawarka, New Delhi 110 076
- 3) The Regional Manager,
Regional Office,
National Highways Authority of India,
Sri Tower, 3rd Floor,
DP34, Industrial Estate, Guindy,
Chennai 600 032
4. The Deputy General Manager-cum-
Project Director,
Project Implementation Unit,
National Highways Authority of India,
No.314E, K.P.Road, Near Ayyappan Koil,
Parvathipuram,
Nagercoil 629 003 Kanniyakumari District



5. The Competent Authority /
Special District Revenue Officer,
(Land Acquisition) National Highways,
Tirunelveli, With Headquarters at
Observatory Street, Nagercoil,
Kanyakumari District.

6. The Special Tahsildar,
(Land Acquisition National Highways), Unit III,
Vilavancode,
at Thrithuvapuram,
Kuzhithurai, Kanyakumari District.

+4 CC to M/s.K.N.THAMBI, Advocate (SR-21806 to 21809[F] dated
09/07/2021)

+1 CC to M/s.SU.SRINIVASAN, Advocate (SR-21828[F] dated
09/07/2021)

+1 CC to M/s.S.SRIMATHY, Advocate (SR-21873[F] dated 09/07/2021)

+1 CC to M/s.C.GODWIN, Advocate (SR-22053[F] dated 12/07/2021)

+1 CC to M/s.SPL GP (SR-22080[F] dated 12/07/2021)

Common Order made in
W.P. (MD) Nos.14645, 15631,
15632 & 15644 of 2016
Dated: 09.07.2021

SSS(CO)
TR(20.07.2021) 28P 15C