



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD) No.22409 of 2021

and

W.M.P. (MD) Nos.18955 and 18957 of 2021

WEB COPY

The American College,
Rep. by its Principal and Secretary,
Dhavamani Christopher,
Tallakulam, Madurai.

... Petitioner

vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Highways Department,
Fort St. George,
Chennai.

2.The District Collector,
Madurai District, Madurai.

3.The Revenue Divisional Officer,
Competent Authority,
Highways Acquisition,
Madurai.

4.The District Revenue Officer,
Competent Authority Highways Acquisition,
District Collectorate Office,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned acquisition notification issued by the fourth respondent in Na.Ka.No.35616/2014/P7, dated 13.11.2021 and the consequential private notices issued in Na.Ka.No.35616/2014/P7, dated 18.11.2021 of the fourth respondent and quash the same as illegal.

For Petitioner : Mr.M.Ajmalkhan
Senior Counsel for
M/s.Ajmal Associates

For Respondents : Mr.Veerakathiravan
Additional Advocate General
Assisted by Mr.D.Ghandiraj
Special Government Pleader



ORDER

Heard Mr.M.Ajmalkhan, learned Senior Counsel and Mr.Veerakathiravan, learned Additional Advocate General assisted by Mr.D.Ghandiraj, learned Special Government Pleader, who had taken notice on behalf of the respondents.

2. The writ petition has been filed in the nature of Writ of Certiorari, calling into question a notification issued by the fourth respondent/The District Revenue Officer, Competent Authority Highways Acquisition, District Collectorate Office, Madurai in Na.Ka.No.35616/2014/P7, dated 13.11.2021 and also calling into question the further and consequential notice issued in Na.Ka.No.35616/2014/P7, dated 18.11.2021 passed by the fourth respondent and to interfere with both the aforesaid notifications.

3. The petitioner herein, is the American College and is represented in this writ petition by the Principal and Secretary. As an introduction, the American College had been established in the year 1881 by the Christian Minority Missionaries called "The American Mission". They had also established St.Stephen College, New Delhi in the same year. The petitioner College has acquired reputation imparting education to students of southern Districts of Tamil Nadu. It is the first college to take on roll, lady students, as early as in the year 1921. Naturally, the construction and the building is also an old/heritage construction. It is stated that as on date, there are about 18 under graduate courses and 15 post graduate courses offered by the College and, there are about 5000 students pursuing education.

4. The aforesaid preliminary introduction has been given, since the College claims that it has been very seriously prejudiced by the notification issued by the fourth respondent and the consequential notification issued by the third respondent. The notification had been issued under Section 15(2) of the Tamil Nadu Highways Act, 2001, and is dated 15.02.2018. It had been issued by the third respondent. In the notice, it had been stated that the respondents intend to construct a fly overbridge over and on the land, which is admittedly under the possession of the petitioner College. To construct the overbridge, lands measuring an extent of 9211 sq.mtrs in S.No.4771, Ward X, Madurai North Taluk, Madurai is required. This is the entire extent of the land. The lands of the petitioner college in Town S.Nos.10, 14, 15, 16 and 1, Madurai North Taluk, Madurai would be affected, if such acquisition is proceeded with by the respondents.

5. Mr.M.Ajmalkhan, learned Senior Counsel for the petitioner assailed the notification issued under Section 15(2) of the said Act on the ground that a preliminary notification, primarily, under Section 8 of the very same Act, had not been issued and unless the



further notification under Section 15(2) would not lie and necessarily, will have to be struck down by the Court. The learned Senior Counsel pointed out the provisions of Section 8 of the Act.

6. Section 8 stipulates the authority who gives power to the competent authority to fix the highway boundary, building line, control line etc. This is done, where construction or development of a highway is undertaken or proposed to be undertaken. Naturally, it can be undertaken only in an existing road, which has been declared as a highway.

7. There might be an another instance, where a particular road would be, for the first time constructed as a highway. In that case, the existing road which is acquired should be declared to be a highway. For that, the highway boundary, the building line, the control line will necessarily have to be fixed.

8. This has to be done prior to the issuance of a notice under Section 15 of the very same Act. Section 15 of the said Act, gives the authority the power to acquire the land. Section 15 (2) can be considered to be an inbuilt safeguard in the Act. This provision has to be read in conjunction with the Rules which have been appended to the said Act. Rule 5 gives the manner of publication of the public notice. Let me first extract Section 15 of the Tamil Nadu Highways Act, 2001, for better appreciation:

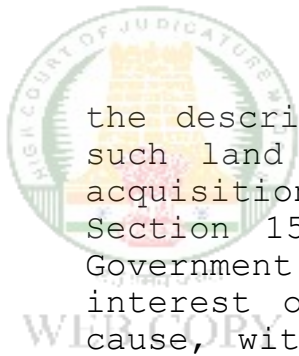
"Section 15: Acquisition of Property:-

(1) If the Government are satisfied that any land is required for the purpose of acquire land. 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 such land is required.

(2) Before publishing a notice under sub-section (1), the Government 1[...], 2 [...], 3[] 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 1[...], 2 [...], 3[] 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."

9. Section 15(1) provides, the power to acquire land by publishing in the Tamil Nadu Government Gazette, a notice specifying



the description of such land and the particular purpose for which such land is required. Prior to the issuance of notice or the acquisition proceedings in the Tamil Nadu Government Gazette, Section 15(2) has to be resorted to, which stipulates that the Government should call upon the owner or any other person having interest on such land and in this case, the petitioner, to show cause, within a specified period, the reasons why the land should not be acquired.

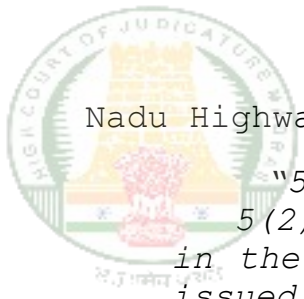
10. A reading of Section 15(2) contemplates that the Government had taken a decision to acquire the lands and the onus shifts to the owner of the lands to give reasons why the lands should not be acquired. It is not a question of the Government justifying acquisition of the lands, but rather the owner, coming forward and giving reasons why the lands should not form part of the acquisition proceedings. Therefore, it necessitates that the owners should be put on notice. There should be a publication or a public notice. Public notice is normally given in newspapers and it is also given in both vernacular and in English newspapers.

11. In this case, the choice of the newspaper has also been assailed by the learned Senior Counsel. He says that the notice had been published in Makkal Kural in Tamil and in Trinity Mirror and the publishing date was 14.11.2021. Learned Senior Counsel stated that he had never heard of a newspaper called Trinity Mirror and questions whether such a newspaper has wide publication and publication in such newspaper can be considered on compliance of the conditions as required.

12. A reading of Rule 5 of the Tamil Nadu Highways Rules, 2003, shows that the Rule provides the method in which, the publication should be given. It indicates that the public notice stating that the lands are to be acquired must be published in one English and in one Tamil newspaper, having circulation in the locality. Circulation in the locality is an issue of fact. This Court can never examine whether a particular newspaper has wide circulation or less circulation. It is an information known exclusively to the people of the local area.

13. At any rate, the petitioner has been made aware of the notification and the notification as such, has been published as required, in one English and in one Tamil newspaper. The word 'substantial' circulation or 'wide' circulation has not been used in the Rule and what has been stipulated is that the newspaper should have circulation in the locality. The local people should be in a position to purchase the newspaper and should be in a position to understand that a notice had been issued in that local area that the lands mentioned in the notice are proposed to be acquired.

14. Thereafter, Rule 5 (2) of the Tamil Nadu Highways Rules, 2003, also gives the manner in which, the objections of the owners have to be dealt with by the authorities. Rule 5(2) of the Tamil



Nadu Highways Rules, 2003, it is extracted below:-

"5(1).....

5(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, 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 forwarded to the Highways Department. The Highways Department may file on or before the date fixed by the Government or the Collector as the case may be, a statement by way of answer to the objections and may also depute a representative to attend the enquiry; .."

15. The above Rule contemplates adherence to the principles of natural justice, which is inbuilt in the Rules. There has to be a date for hearing. There has to be notice issued to the objector. There has to be a notice issued to the Highways Department Authority. There has to be forwarding of copies of objection to the Highways Department. There has to be an opportunity to the Highways Department to file their statement and answer the objections and thereafter, they must also attend the enquiry. Naturally the onus is on the person interested in attending the enquiry. There must be a hearing of the objector or a person authorized by him. This naturally indicates there must be an opportunity of personal hearing being given. Thereafter, after following due procedure during the course of enquiry, an order can be finally passed under Section 15 (3) of the Act.

16. These are all protections, which are inbuilt in the Statute, and I am confident that the petitioner does not imply they would be denied such protection. The petitioner would be given necessary protection under the Statute as envisaged under Section 15 (2) r/w Rule 5 of the Rules. Naturally, only after going through all these processes would an order under Section 15(3) of the Act be passed.

17. The learned Senior Counsel placed reliance on a Judgement of a learned Single Judge of this Court in a batch of matters in the case of ***R.Moorthy and 28 others Vs. State of Tamil Nadu and anothers*** reported in ***2014 (2) CWC 763*** in ***W.P. (MD)Nos.39261 of 2003 etc batch, dated 25.09.2014***. The learned Single Judge had taken a view, that if the Statute prescribed a particular act is to be done in a particular manner, then, no leverage can be granted to the authority to do that particular act in any other manner but a direct burden is caused on the said authority to do that act in the manner prescribed. No excuses can be given or can be sought or can be granted for any deviation in the procedures.



18. The deviation in the procedures which has been pointed in the instant case is, non-issuance of notification or declaration that the road which is sought to be acquired under Section 8 of the Act.

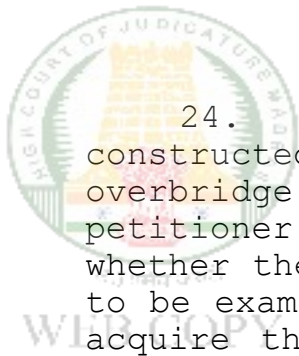
19. The learned Single Judge was actually presented with two differing rulings of two learned Single Judges of this Court and he had followed the dictum laid down in one and stated that the other one was distinguishable on facts.

20. The learned Senior Counsel also relied on the decision of a Division Bench of this Court in the case of ***R.Kumar and Others Vs. State of Tamil Nadu*** reported in **2006 (4) CTC 640**. The Division Bench of this Court had distinguished the judgment in ***Jayaraman Vs. State of Tamil Nadu*** reported in **2014 (1) CWC 635**.

21. In ***R.Moorthy and 28 others Vs. State of Tamil Nadu and another***, the learned Single Judge of this Court, had stated that with respect to delegation of power by the District Collector to the District Revenue Officer, the District Revenue Officer was not competent to issue such notification under Section 15(2) of the State Act. He had been stated that the officer or the authority who issued the notice in those cases did not have any such authority to issue the notices. Thereafter in para.147 of the said decision, the learned Single Judge had also observed that the impugned Notification under Section 15(2) of the State Act, had been issued without complying with the pre-requisite of issuing a Notification under Section 8(1) of the Act, fixing the highway boundary, building line or control line and without even issuing notice as per Section 8(2)(b) of the Act to the persons likely to be affected by such Notification. It had been stated in the judgment that the alignment and other technical issues are to be decided by the Highways Authority and therefore, there must be an identification of the lands before a decision is taken. Further in Para.151, the learned Single Judge has stated that since there was no such Notification declaring the road as Highways and since no marking was also done, enquiry as contemplated under Section 15(3) would be meaningless.

22. The learned Additional Advocate General appearing for the respondents pointed out that the above are issues which can be examined during the course of enquiry, as contemplated under Section 15(2) and also as laid down under Rule.

23. Whether the Notification issued under Section 8 is required or not is an issue of fact. The nature of the lands which are now sought to be acquired are again issues of facts. In ***R.Moorthy and 28 others Vs. State of Tamil Nadu and another***, it was clearly held that the road which was sought to be acquired, was to be developed as a highway. The learned Senior Counsel stated that even in that case, it was for the construction of a overbridge.



24. But there is a distinction between an overbridge being constructed in the course of development of a highway and an overbridge being constructed in the heart of a city. The petitioner's objections, particularly, with respect to alignment and whether the lands of the petitioner are actually required, will have to be examined only by the authorities, who had taken a decision to acquire the said lands. This Court cannot substitute itself for those authorities.

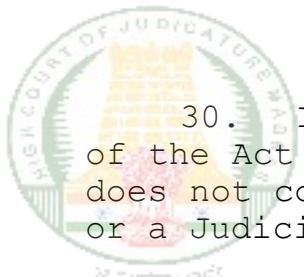
25. It would only be appropriate that the petitioner is relegated back to the authorities and granted liberty to raise necessary objections to the Notification itself and an obligation is placed on the respondents to enquire whether this particular notification requires pre-issuance of a notification under Section 8 or not. These are issues on facts. Eventhough the learned Single Judge has stated in **R.Moorthy's case (referred supra)**, that a Notification not preceded by a prior Notification under Section 8 of the Act can be interfered with, in the present case, I would confine myself to the provisions of law as given in the Act and in the Rules and hold that the petitioner has been given necessary safeguards and can raise all these objections before the authorities. I would also give liberty to the petitioner that if the objections are over ruled or not considered, then, he may also invite a ruling whether for the particular land which is acquired, the Notification should be preceded by a Notification issued under Section 8 of the Act.

26. Let the facts be first decided. The petitioner has come to the Court immediately when a notice under Section 15(2) had been issued. Let the petitioner first approach the authorities. Let the petitioner give the reasons why the lands should not be acquired. Among reasons, the petitioner can also state that Notification under Section 8 was not issued. That is also an issue to be advanced by the petitioner before the competent authority and thereafter, the competent authority should examine the objections in manner known to law and in manner prescribed by law.

27. The provisions had been extracted aforesaid and I am confident that the respondents would examine the objections in the light of the provisions of the Act.

28. Granting that liberty to the petitioner herein and directing the respondents to proceed in manner known to law and consider the objections which are raised by the petitioner, I hold that the writ petition at this stage is premature.

29. The learned Senior Counsel for the petitioner had also relied on the Judgment of the Hon'ble Supreme Court of India in the case of **Laljibhai Kadavabhai Vs. State of Gujarat** reported in **2016 (9) SCC 791**. The learned Senior Counsel stated that the provisions under which, the lands in that particular case had been acquired is para-materia to the provisions of the Tamil Nadu Highways Act and therefore, reference can also be made to that judgment.



30. I would, with respects, confine myself to the provisions of the Act under which the present notification has been issued. It does not contemplate that the authority should either be a Sub-Judge or a Judicial Officer. The facts are also distinguishable.

31. I would still maintain the order of dismissal of the writ petition, however, giving liberty as aforesaid, to the petitioner to approach the competent authority in manner known to law. Let the petitioner approach the authority concerned with their objections and thereafter, let an order be passed in accordance with the Statute and the Rules appended therein.

32. In the result, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

sj i

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,
State of Tamil Nadu,
Highways Department,Fort St. George, Chennai.
- 2.The District Collector,
Madurai District, Madurai.
- 3.The Revenue Divisional Officer,
Competent Authority,
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**W.P. (MD) No.22409 of 2021
and**

**W.M.P. (MD) Nos.18955 an 18957 of 2021
21.12.2021**

MGJ(07.01.2022) 8P 5C

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