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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
22.03.2022	07.04.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS. 18837 & 19123 OF 2009

AND

M.P. NOS. 2 OF 2009 (2 Nos.)

C.Thangaraju .. Petitioner in WP 18837/2009

1.Nallusamy

2.Murugesan .. Petitioners in WP 19123/2009

- Vs -

1.The Competent Authority - cum-
District Revenue Officer
Namakkal District.

2.Union of India, by its Secretary
Ministry of Road Transport & Highways
New Delhi.

3.NK Toll Road Ltd.
(Concessionaires on BOT Basis
For Namakkal Karur (NH-7) Four
Laning Project, rep. by its Authorized Signatory
Shri Shanker Lal Verma, S/o Kannaiyalal Varma
Flat No.104, Aadi Apartments
Anna Nagar, Karur 639 002.

4.The Project Director
National Highways Authority of India
No.10, Kamadhenu Nagar
Karur 639 001. .. Respondents in both petitions

(R4 impleaded as per order dated 12/09/2019 in
MP.1/2011 in WP.18837/2009 and MP.1/2011 in
WP.19123/2009 by TRJ)

W.P. No.18837 of 2009 filed under Article 226 of the
Constitution of India praying this Court to issue a writ of



certiorari to call for the records relating to the impugned proceedings passed by the 1st respondent in Na.Ka. No.18125/07 (H4) dated 23.03.2009 in respect of land in survey No.237/1C1 situated at Rasampalayam Village, Namakkal Taluk, which has been published in 'Daily Thanthi' on 28.03.2009 and quash the same.

W.P. No.19123 of 2009 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records relating to the rejection order of the 1st Respondent passed in ROC.18125/2007/H4 dated 21.10.2008 and the consequent proceedings in Na.Ka. No.18125/07 (H4) dated 23.03.2009 in respect of land in survey No.237/1A2, 237/1B2 and 228/2B situated at Rajapalayam Village, Namakkal Taluk, and quash the same.

For Petitioners : Mr.V.Ayyadurai, SC, for
Mr. R.Bharanidharan

For Respondents : Mr. M.Murali, GA for R-1
Mr. G.Karthikeyan for RR-2 to 4

COMMON ORDER

The present petitions have been filed assailing the acquisition of lands of the petitioner by the 4th respondent, viz., National Highways Authority of India (for short 'NHAI') for the purpose of establishment of Toll Plaza for the collection of toll by the Concessionaire, viz., the 3rd respondent.

2. It is the averment of the petitioners that for the purpose of laying the four way lane from Namakkal to Karur, the lands of the petitioners were acquired, for which a paltry sum was paid as compensation. It is the further averment of the petitioners that inspite of the objections raised by the petitioners, the same were not properly considered by the respondents and mechanically notification u/s 3-C (2) was issued and the lands were acquired u/s 3-D of the National Highways Act (for short ('NH Act')).

3. It is the further averment of the petitioners that the acquisition of land for the construction of administrative block for the toll plaza is a colourable exercise of power by the 1st respondent. It is the averment of the petitioners that already the 3rd respondent, viz., the Concessionaire, had entered into a lease agreement with the petitioners for taking the land on lease for a period of 18 years and that the toll plaza is functioning. Therefore, the acquisition of land for the very same purpose for which lease agreement has been entered into



between the petitioners and the 3rd respondent clearly shows non-application of mind. Further, it is the further averment of the petitioners that the 3rd respondent is entitled to collect toll only for a period of 20 years and on and after the said period, the said acquisition would not serve any purpose. That being the case, utilization of public money for a purpose, which is not permanent and perennial is wholly without reason. Therefore it is the stand of the petitioners that the acquisition of land for the purpose of toll plaza, which is temporary in nature, is not for a public purpose as contemplated under the law and, therefore, the proceedings of the 1st respondent is in violation of the NH Act. Raising the above grounds, the present petition has been filed by the petitioners.

4. Learned senior counsel appearing for the petitioners submitted that the petitioners are challenging the notice u/s 3-C (2) and the Declaration issued u/s 3-D of the NA Act on three grounds, viz.,

- i) Already the properties of the petitioners were acquired for the formation of four way lane and that road was constructed. In addition to the said four way lane, for erecting toll plaza and other ancillary works, the present lands are acquired for the purpose of constructing facilitating administrative block. When the petitioners and the 3rd respondent, viz., the Concessionaire had already entered into a lease agreement on 19.2.09 for construction of administrative block and during the subsistence of the said lease between the petitioners and the 3rd respondent, the acquisition done by the 1st respondent vide the impugned proceedings is wholly unsustainable. Further, no notice having been given to the petitioner prior to the Notification u/s 3-C (2) and the Declaration u/s 3-D, objections raised in this regard having not been considered properly and orders have been passed in a mechanical manner without proper application of mind, clearly reveals colourable exercise of power on the part of the official respondents.
- ii) The details of the description of the property published u/s 3-A (2) of the NH Act is not identical to the description of the property published u/s 3-D Notification, which clearly shows non-application of mind on the part of the official respondents. The wrong description in the publication made u/s 3-A (2) and 3-D renders the acquisition vitiated.
- iii) The present acquisition is not in terms of NH Act. The acquisition is only to facilitate the toll plaza contractors, which is not within the original scheme and it is in no way connected with any public purpose.



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The initial land acquisition for the original scheme of four way lane did not envisage construction of administrative blocks and, therefore, the subsequent acquisition of lands for the purpose of construction of administrative block is not sustainable. Further when the existing law for acquiring the lands for ancillary works, viz., Requisitioning and Acquisition of Immovable Property Act, 1952, occupied the field, acquiring lands for administrative block in favour of the Union Government under the NH Act is not sustainable.

5. Elaborating the contentions aforesaid and trying to prevail upon this Court for favourable orders for the petitioners, learned senior counsel appearing for the petitioners further contented that insofar as the petitioner in WP 18837/2009 is concerned, though the lands were purchased by the petitioner and the revenue records stood mutated, however, the Notification has been issued only in the name of the erstwhile owner, which is impermissible. Learned senior counsel, in support of the aforesaid contentions, placed reliance on the following decisions :-

- i) Mohamed Sultan Maraicar - Vs - The Special Secretary, Government of Puducherry (2016 (4) CTC 666);
- ii) Jiwani Kumar Paraki - Vs - First Land Acquisition Collector, Calcutta & Ors. (AIR 1984 SC 1707);
- iii) Competent Authority - Vs - Barangore Jute Factory & Ors. (2005 (13) SCC 477);
- iv) Mohan Singh Gill & Ors. - Vs - State of Punjab & Ors. (2015 (8) SCC 345); and
- v) Chaitram Verma - Vs - Land Acquisition Officer & Ors. (AIR 1994 MP 74)

6. Per contra, respective learned counsel appearing for the respondents, on the basis of the counter filed on behalf of the respondents, submitted that pursuant to the Notification dated 19.01.2007 in and by which lands were notified to be acquired for the purpose of expansion of four way lane, enquiry u/s 3-G (3) of NH Act was conducted and though as per the notification, lands were in the name of one Ponnusamy, S/o Karuppa Gounder, however, the petitioners appeared for enquiry and after hearing the land owners and after perusing the records, more particularly the sale document, award was passed vide proceedings dated 25.10.07. It is the further submission of the learned Government Advocate that even in the year 2009, when further extent of lands were sought to be acquired for the present purpose of constructing toll plaza and administrative block, as per the village records, the land still stood in the name of Ponnusamy, S/o Karuppa Gounder, which led to the



notification being published in the name of the said individuals. However, during the enquiry u/s 3-G (3), none appeared and, therefore, award was passed and the compensation is lying to the credit of Award No.23/2009. Therefore, the stand of the petitioners that no notice was issued to them cannot be put against the respondents.

7. It is the further submission of the respective learned counsel that proposal to acquire an extent of 4402 sq. mtrs., of land including the lands of the petitioner, were sought to be acquired for the purpose of formation building, maintenance, management and operation of the national highway, including construction of by-pass road for which Notification u/s 3-A (1) of the Act was issued. It is the further submission of the respective learned counsel for the respondents that the Act would very much be attracted and there is no necessity for the respondents to invoke the Requisitioning & Acquisition of Immovable Property Act for the simple reason that the National Highways Act takes within its fold maintenance and management and operation of national highway. Therefore, the contention of the petitioner that invocation of the National Highways Act is wholly erroneous when a specific Act is available for making acquisition of immovable property for other purposes is available does not stand the test of judicial scrutiny.

8. Insofar as the contention of the petitioners that the lease agreement had been entered into between the petitioners and the 3rd respondent on 19.2.09 for the very same purpose of providing administrative building for the toll plaza and, therefore, there was no necessity for the acquisition of the petitioners lands for the very same purpose, it is the submission of the learned counsel that the lease agreement had been entered into on 19.2.09, but publication of Declaration under sub-section (1) of Section 3-D and, therefore, on and from the said date, the land shall vest absolutely in the Central Government free from all encumbrances u/s 3-D (2) of the Act. Therefore, the lease agreement, which has been entered into after the vesting of the lands on the Central Government would not affect the acquisition proceedings, nor would the said agreement be taken note of to consider the case of the petitioner for releasing the lands from acquisition. Therefore, the lease agreement entered into between the petitioner and the 3rd respondent is invalid in view of the publication of the notification u/s 3-D (1) of the Act.

9. It is the further submission of the respective learned counsel that the contention of the petitioner that the Concessionaire has been granted permission only for 20 years and, thereafter, the facility would not be a necessity and, therefore, on the ground of it not being permanent and



perennial, the acquisition proceedings vitiated does not merit acceptance for the simple reason that after the period of 20 years, when the concessionaire agreement comes to an end, the whole facility would be handed over to the Government, whereinafter, the facility would be maintained and run by the Government. Therefore, the contention of the petitioner that the facility is not permanent is wholly misconceived.

10. The petitioners having neither filed any objections nor participated in the enquiry proceedings and submitted any materials to substantiate their title to the property and the revenue records having not been mutated and stood in the name of the erstwhile owner, whose name was given in the publication of notice and the further fact that the administrative building for which the lands were acquired being a facility required for the maintenance and operation of the toll road, the applicability of the National Highways Act would stand squarely attracted and the lease agreement entered into between the petitioners and the 3rd respondent is subsequent to the vesting of the lands on the Central Government on the basis of the notification published u/s 3-D (1) on 13.2.09, the contentions of the petitioners are wholly unacceptable and, accordingly, the writ petitions deserves to be dismissed.

11. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

12. As already stated above, three fold contentions have been raised by the learned senior counsel appearing for the petitioners. The first of the contention relates to the non-issue of notice to the petitioners for enquiry u/s 3-G (3) of the Act. There is no quarrel about the fact that notice is necessary to the owner of the property in whose name the property stands as per the revenue records at the time of the said acquisition.

13. In the case on hand, in the year 2007, initially lands were acquired pertaining to S.F. No.237/1C for which Notification u/s 3-D (1) dated 19.01.2007 was issued. In the said notification, the name of Ponnusamy, S/o Karuppa Gounder was shown. It is the stand of the respondents that as per the revenue records, the said survey field stood in the name of the said Ponnusamy. However, at the time of enquiry u/s 3-G (3), the petitioners appeared for enquiry and produced the sale document and claimed compensation and, accordingly, compensation was awarded by passing the relevant award proceedings. The above fact, which is placed before this Court in the form of counter is not disputed by the petitioners.



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14. It is further borne out by record that insofar as the present acquisition, which is put in issue, which pertains to the year 2009, 1248.0 sq.mtrs., of land was sought to be acquired for which notification u/s 3-D (1) was published. It is the stand of the official respondents that the revenue records, even at this point of time, carried the name of Ponnusamy as the owner of the land and, therefore, the notification was issued in his name. Further, enquiry notice u/s 3-G (3) was also issued, but, however, no one appeared at the time of the enquiry, which resulted in the passing of the award.

15. Though the petitioners claim that no notice was issued to them for the enquiry u/s 3-G (3), yet there is no whisper on the part of the petitioners as to whether the revenue records stood mutated and it carried the name of the petitioners at the time of issuance of notification in the year 2009 and also at the time of issuance of notice for enquiry u/s 3-G (3). It is to be pointed out that at the time of initial acquisition for the purpose of four way lane, in the year 2007, the lands were purchased by the petitioners and they had partaken in the enquiry u/s 3-G (3), though notice was not issued to them. The said submission is not disputed by the petitioners. The decision in Mohamed Sultan's case (supra) relied on behalf of the petitioners would not help the cause of the petitioners any further as in the said case, mutation of revenue records had taken place even before the acquisition proceedings, whereas, that is not so in the case on hand.

16. In the aforesaid backdrop, in the absence of mutation of revenue records so as to carry the name of the petitioners as the title holders of the said lands, non-causing on notice on the petitioners would in no way affect the acquisition of the lands of the petitioners. The official respondents can only go on the basis of the revenue records and cause notification and publication and if the petitioners had not been diligent enough to get the revenue records mutated in their name, which would have resulted in the notices being issued on them, no liability can be fastened on the official respondents to hold that no notice has been issued to the petitioners, which, in turn, vitiate the enquiry. For the reason aforesaid, the first contention advanced on behalf of the petitioners deserves to be rejected.

17. Insofar as the contention of the petitioners that the description of the property provided in the publication u/s 3-D is not in consonance with the notification issued u/s 3-A (2) and the said discrepancy vitiates the acquisition proceedings, advertence is to be made to Section 3-A (2) and 3-D of the Act, which are quoted hereunder for reference :-



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"3-A. Power to acquire land, etc.- (1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.

(2) Every notification under sub-section (1) shall give a brief description of the land.

* * * * *

3-D. Declaration of acquisition.- (1) Where no objection under sub-section (1) of Section 3-C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of Section 3-A.

(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

* * * * *

18. A careful perusal of the above provisions, more especially sub-section (2) to Section 3-A reveals that the notification under sub-section (1) shall give a brief description of the land. From the above, it is clear that detailed and complete description of the land is not required to be given nor is envisaged under the aforesaid provision. Based on the brief description provided about the land in the notification under sub-section (2) of Section 3-A, after following the other provisions of the Act, publication of the declaration is to be made under sub-section (2) of Section 3-D pursuant to the notification being published in the official gazette as provided under sub-section (1) to Section 3-D.

19. A conjoint reading of the aforesaid provisions clearly leads this Court to the irrefutable conclusion that what is mandated is a brief description of the lands to be given in the notification and it is not necessary that the notification u/s 3-A (2) and 3-D (1) and (2) should be identical. Further, the petitioner has not given the discrepancy, between the notification issued u/s 3-A and the publication u/s 3-D, but for merely averring that there is a discrepancy between the



notification and the declaration. Whether the discrepancy, which is sought to be canvassed before this Court affects the substratum of the case of the petitioners or not could be gone into only when the discrepancy is spelt out and without detailing the said discrepancy, the contention of the petitioners that the discrepancy vitiates the acquisition is too big an ask for this Court to accede to. In such a scenario, the decision in Barangore Jute Factory case (supra) relied on by the petitioners will not stand attracted to the case of the petitioners. Therefore, the said contention also does not merit acceptance.

20. One of the main contention of the petitioners is that they had already leased out their lands to the 3rd respondent for the very same purpose for which it is sought to be acquired and, therefore, the acquisition proceedings is wholly unsustainable. It is the further contention of the petitioners that the concessionaire agreement between the 3rd respondent and the official respondents is only for a period of 20 years and in the absence of permanency of the agreement, the acquisition labeled for public purpose cannot be countenanced.

21. Though such a submission is advanced on behalf of the petitioners, however, the materials available on record reveal that the 3-D (1) Declaration has been published on 13.2.09, but the lease agreement had been entered into between the petitioners and the 3rd respondent only on 19.2.09. In this regard, a perusal of Section 3-D (2) of the Act reveals that on publication of the declaration u/s 3-D (1), the lands shall vest absolutely with the Central Government free from all encumbrances. Therefore, it is evident that on the date, viz., 19.2.09, when the petitioners and the 3rd respondent had entered into the lease agreement, the petitioners did not have any title to the said property, as even as on 13.2.09, the lands stood vested with the Central Government.

22. Further, it is to be pointed out that the contention of the petitioners that there is no permanency and perennial nature in the project, as the concessionaire agreement itself is only for a period of 20 years after which the purpose of the acquisition would be defeated, the said contention does not deserve acceptance for the simple reason that the roads will stand the usage even after the period of the concessionaire agreement and it is the categorical stand of the official respondents that after the agreement period, the whole project would revert back to the Central Government and that the official respondents would be maintaining the toll plaza. It cannot be disputed or controverted by the petitioners that after 20 years, there would be no road and the whole project will vanish. Roads are there to stay and, in fact, with the



explosion and growth, the transport system is prone to develop which will even lead to expansion of the road project from four way lane to six way lane and so on. Therefore, it cannot be said that there is no permanency in the project as roads are perennial in nature and would be used till eternity.

23. In this regard, the petitioners have relied on the decision of the Hon'ble Apex Court in Jiwani Kumar Paraki case (supra). On a perusal of the said decision reveals that it would in no way further the case of the petitioners and would only act in detriment to the petitioners. Therefore, the contention of the petitioners relating to lease agreement having been entered into and permanency not being there in the project does not deserve acceptance.

24. Coming to the contention of the petitioners relating to the acquisition being unsustainable, as the acquisition has not been made under the Requisitioning and Acquisition of Immovable Property Act but under the National Highways Act, as there is no public purpose involved in the said project, to answer the said submission, it is but necessary to peruse Section 3-A (1) of the Act, which pertains to the power of the Central Government to acquire lands.

25. As already extracted above, power to acquire lands is contained in Section 3-A (1) of the Act and the Central Government, if it is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land. It is the contention of the petitioners that the lands are acquired for the administrative building for the toll plaza, which has no element of public purpose involved in it and, therefore, the said acquisition not having been made for a public purpose, the same cannot survive and it should have been made only under the Requisitioning and Acquisition of Immovable Property Act and the invoking of powers for acquisition of lands under the National Highways Act is wholly erroneous and unsustainable.

26. Though such a contention, on the face of it looks attractive, but it fails on properly judicial scrutiny for the reason that though lands are to be acquired, on the satisfaction of the Central Government, for a public purpose, for the reasons provided u/s 3-A (1), however, the purposes for which the lands are to be used would have a bearing on the public purpose involved in the acquisition of land. Section 3-A (1), as already aforesaid, includes land for the purpose of building, maintenance, management or operation of a national highway. The lands, which were acquired in the year 2007, have led to the



formation of national highway and along the national highway, toll plaza has been provided. For the efficient maintenance, management and operation of the toll plaza, the necessity of a building towards carrying on the administrative activity pertaining to the toll plaza is all the more necessary. The lands have been acquired for the purpose of the administrative block for the toll plaza, which falls within the ambit of public purpose, as provided u/s 3-A (1) and, therefore, the acquisition, cannot be termed to be not for a public purpose, as the project, which is for a public purpose should be seen as a whole and not disjunctly. Therefore, the act of the official respondents in not invoking the Requisitioning & Acquisition of Immovable Property Act for the purpose of acquiring the aforesaid lands for providing administrative building to the toll plaza does not call for any interference.

27. Insofar as the other decisions relied on behalf of the petitioners, the said decisions would not stand attracted to the case on hand and also would not be of any help to the petitioners in canvassing their contentions. Therefore, this Court refrains itself from dealing with the said decisions.

28. For the reasons aforesaid, this Court is of the considered view that no case is made out on behalf of the petitioners and, accordingly, both the writ petitions fail and the same are dismissed. Consequently, connected miscellaneous petitions are also dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-VI)

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Sub Assistant Registrar

GLN

To

- 1.The Competent Authority - cum-
District Revenue Officer
Namakkal District.
- 2.The Secretary
Union of India
Ministry of Road Transport & Highways
New Delhi.



3.The Project Director
National Highways Authority of India
No.10, Kamadhenu Nagar
Karur 639 001.

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+1cc to Mr.G.Karthikeyan, Advocate, S.R.No.24232
+2cc to Mr.R.Karthikeyan, Advocate, S.R.No.23804
+1cc to the Government Pleader, S.R.No.24585 & 24586

W.P. NOS.18837 & 19123 OF 2009

BP (CO)
SB (20/04/2022)