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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No. 9977 of 2006

V.N.Devadoss

.. Petitioner

Versus

1.The Secretary to Government
Ministry of Shipping Surface Transport
and Highways Department,
New Delhi.

2. The Competent Authority Cum
Special District Revenue Officer,
(Land Acquisition)
National Highways,
Kancheepuram District and
Tiruvallur District.

3. Jayammal (died)

4. M.K.Deenadayalu

5. M.K.Thulasidharan

6. M/s.Murali Brick Works,
Rep. By Partners,
M.Janarthan & Janobai,
90, K.R.Koil Street,
West Mambalam, Chennai-33.

7. Janobai

8. J.Vijaya Lakshmi

9. M.J.Sathyanarayana

10. S.Geetha Saraswathy

(R7 to R10 are substituted as LR's in the place of
deceased 6th respondent as per the order of this Court
dated 12.04.2013 in W.P.No.581/2011 in W.P.no.9977/2006)

.. Respondents



Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring the provisions of Sections 3A 3C 3D 3G 3H and 3J of the National Highways Act 1956 as arbitrary invalid hit by Article 14 of the constitution of India and unconstitutional.

For Petitioner : Mr.A.Sivaji

For Respondents : Mr.Raja Vivekanand R1
Additional Solicitor General

Mr.M.Murali R2
Government Advocate

Mr.P.Sunil @ Sunil Prakash RR3 & 4
For M/s.T.Viswanatta Rao

ORDER

This writ petition is filed seeking for declaring the provisions of Sections 3A, 3C, 3D, 3G, 3H and 3J of the National Highways Act 1956 as arbitrary, invalid, hit by Article 14 of the constitution of India and unconstitutional.

2. It is the case of the petitioner that his land was sought to be acquired by the Government under National Highways Act, 1956. It is the further case of the petitioner that the land in question is entangled in civil suits and at the time of filing the writ petition, the suits were pending.

3. Be that as it may, it is the contention of the petitioner that the land in question is not required to be acquired by the Government and he was sought for striking down of the above mentioned provisions of the National Highways Act.

4. This Court is not inclined to go into the merits on the contention raised by the petitioners, since the petitioner has approached this Court on earlier occasion seeking almost very same relief and this Court has also dismissed the said writ petition.

5. On the earlier occasion, the petitioner has filed the writ petition in W.P.No.9961 of 2006 with the following prayer:

'Writ Petition has been filed under Article 226 of the Constitution of India to issue a writ of certiorari to call for the records of the first respondent dated 05.10.2005 and 21.02.2006 the Central Government notifications issued under the National Highways Act 1956



as published in the Dinamani dated 21.10.2005 and 11.03.2006 and quash the same in so far as the same relates to the petitioner land is concerned.

6. This Court, by its order dated 14.09.2012, after hearing elaborately on the learned counsel on both sides, has dismissed the writ petition. The relevant portion of the order is read as follows:

'3. The basis of the petitioner's case is that pursuant to an agreement of sale with respondents 3 to 6 dated 12.12.1994, the petitioner has effected payment of sum of Rs.1,10,00,000/- out of the total sale consideration of Rs.1,48,48,500/- and has been put in possession of the property covered by the agreement, but owing to the owners not having acted as per the agreement of sale, petitioner moved a suit for specific performance in O.S.No.264/2000 before Sub Court, Poonamallee. It is incidental that owing to alleged disturbances caused to the petitioner, he also preferred a suit seeking relief of permanent injunction against the respondents 4 to 6 against alienation or encumbrance of the property to any third party.

4. It has been contended by learned Senior counsel for the seventh respondent that the petitioner is a mere agreement holder and could not claim to be a 'person interested' and hence has no right whatsoever to challenge the acquisition proceedings. However, he submitted that taking note of the pendency of the suit for specific performance, the compensation awarded would be deposited before the appropriate court and the successful party in the litigation may receive the same from such court. In view of such submission, this court considers it unnecessary to enter upon finding on the question of locus standi of the petitioner.

5. The contention of the petitioner regards the validity of the various provisions of the act save that regards Section 3A(1) of the National Highways Act, cannot stand in the light of the decision of the Apex Court in Competent Authority vs Barangore Jute Factory and Others (2005) 13 SCC 477.

6. Learned Senior counsel for the seventh respondent would submit that unlike Section 5-A 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 3-C(1) of the National Highways Act, 1956 gives a very limited right to object. The objection can be



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only to the use of the land under acquisition for purposes other than those under Section 3-A(1). The Act confers no right to object to acquisition as such. Further contention of the petitioner flow on the premises that the procedure prescribed in the Land Acquisition Act, 1894 is to be followed. This contention is based on the finding of a learned Single Judge of this court that Section 3J of the National Highway Act will stand struck down. In view of the judgment of learned Single Judge in W.P.Nos.15699, 15818, 15819 of 2008, 22912, 22913, 28122 to 28133, 28314 to 28321, 28917 to 28922 of 2010 dated 04.03.2011 being under challenge in appeal in W.A.Nos. 2358 of 2011, 2358, 2363 to 2388 of 2011, and an order of stay stands granted on 23.02.2012, such contention cannot be considered.

7. The contention of learned counsel for petitioner that requirement of Section 10 of the National Highways Act that all notifications issued under the Act be placed before both Houses of Parliament ' as soon as may be after they are issued' is met by learned Senior Counsel for the Seventh respondent by placing reliance on decision of a Division Bench of this court in W.P.No.20332 of 1998 etc. Therein a similar contention stands negated through reference to decision in Atlas Cycle Industries Ltd. v. State of Haryana, AIR 1979 SC 1149, dealing with a similar issue relating to laying of notifications under the Essential Commodities Act before both Houses of Parliament wherein it was held that not doing so could not result in nullification of the notification.

8. For the aforesaid reasons, this writ petition fails and accordingly shall stand dismissed. However, it would be to the petitioner to seek and obtain the compensation amount in the event of his being successful in the litigation wherein he has sought specific performance. Though impossibility of performance could be an additional ground which could be raised by the defendants in a suit for specific performance under normal circumstances, in the particular circumstances of this case, it would be necessary for the civil court to decide the litigation dehors such contention towards arriving at a conclusion as to the person entitled to receive compensation. No costs connected miscellaneous petitions are closed.''

7. The contention raised by the writ petitioner has been answered already by this Court in the above mentioned judgment. Therefore, no fresh adjudication is necessary for the same issue in the present writ petition.



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8. Accordingly, the writ petition is dismissed following the above order of this Court. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Rli

To

1.The Secretary to Government
Ministry of Shipping Surface Transport
and Highways Department,
New Delhi.

2. The Competent Authority Cum
Special District Revenue Officer,
(Land Acquisition)
National Highways,
Kancheepuram District and
Tiruvallur District.

+2cc to M/s.T.Viswanatta Rao, Advocate, S.R.No.20055
+1cc to Mr.A.Sivaji, Advocate, S.R.No.19972
+1cc to the Government Pleader, S.R.No.20408

W.P. No. 9977 of 2006

PMK(CO)
CT 10/06/2022