



W.P. No.15155/2010, etc. Batch

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

| Reserved on | Pronounced on |
|-------------|---------------|
| 11.11.2022  | 25.11.2022    |

**CORAM**

**THE HONOURABLE MR. JUSTICE M.DHANDAPANI**

**W.P. NOS.15155 TO 15163, 18917 & 24634 OF 2010  
AND  
M.P. NOS.5, 6 & 7 OF 2010**

**W.P. No.15155 of 2010**

S.Albert Emmanuel

.. Petitioner

**- Vs -**

1. Union of India

Rep. by its Secretary  
Ministry of Shipping, Road Transport  
& Highways, New Delhi.

2. The Competent  
Authority &

Special District Revenue Officer  
National Highways  
O/o the Villupuram District Collectorate  
Villupuram, Tamil Nadu

3. The Project Director

National Highways Authority of India  
No.10, Govindasamy Nagar  
Vazhudhareddy Post, Villupuram 605 401.

.. Respondents



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W.P. No.15155 of 2010 filed under Article 226 of the Constitution of India praying this Court to issue a writ of Declaration declaring the provisions u/s 3 –D (2) and 3 (F) of the National Highways Act, 1956, as null and void and unconstitutional and further to issue a certiorarified mandamus calling for the entire records available on the files of the 1<sup>st</sup> respondent pertaining to and which were the basis for the issue of notifications u/s 3-A (1) and 3-D(1&2) of the National Highways Act, 1956, published in the Gazette of India, Part-II, Section 3, sub-section (ii) on 16.01.2009 and 27.07.2009 respectively and that from the 2<sup>nd</sup> respondent pertaining to his proceedings in Na.Ka.A/Tha.Ma.A/NH.66/841/2007 dated 19.05.2009 proceedings in Na.Ka.No.A/PuVaSa/66-12/07 dated 31.03.2010 and the notice seeking possession of lands u/s 3-E (1) of the National Highways Act, 1956, dated 18.05.2010 and quash the same insofar as the lands of the petitioner having an extent of 232 sq.m and comprised in survey No.250/4A2 of Pattanur Village, Vanur (T.K.), Villupuram District for building (widening/four laning), maintenance, management and operation of National Highway No.66 on the stretch of land from KM 3/600 to MM 37/920 (Pondicherry-Tindivanam Section) in Villupuram District in the State of Tamil



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Nadu is concerned and consequently direct the respondents to receive back the amount paid as compensation to the petitioner pursuant to the aforesaid award dated 31.03.2010.

For Petitioners : Mr. N.Subramanian

For Respondents : Mr. R.Rabu Manohar, SCGPC for R-1  
Mr. B.Vijay, AGP for R-2  
Mr. S.R.Sumathy for R-3

**COMMON ORDER**

The acquisition of lands for the purpose of four laning/widening the Pondicherry-Tindivanam Section of NH-66, which has resultantly ended in the passing of award and receipt of compensation by the concerned petitioners, is put in issue before this Court, in the present batch of writ petitions, questioning the said acquisition on the ground that the said acquisition is not only covered by the Gazette Notification, but also acquired with *mala fide* intent and, therefore, the acquisition is bad in law and deserves interference by directing the respondents to return the land and receive back the compensation paid to the petitioners pursuant to the passing of the award.



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2. Initially the writ petitions were filed questioning the validity of the acquisition and, thereafter, miscellaneous petitions were filed in W.P. Nos.15155 to 15163 and 18917/2010 for amending the prayer which questioned the validity of Sections 3-A, C-3, C-D, 3-F and 3-J of the National Highways Act, which, on amendment, were placed before the Division Bench of this Court, since the validity of provisions of a statute were put in issue and before the Division Bench, the petitioners in the said petitions sought permission to withdraw the portion of the prayer in which the constitutional validity of the provisions were challenged, which plea was accepted and resultantly, the original prayer was permitted to be canvassed and, therefore, the present petitions have been listed before this Court.

3. The short facts of the case leading to the filing of the present petitions are that notification u/s 3-A (1) and 3-D (1) and (2) of the National Highways Act (for short 'the Act') on 16.01.2009 and 27.07.2009 respectively for acquisition of land for widening/four laning of the National Highways was issued by calling for objections and the objections were considered u/s 3-C of the Act and the objections were rejected on 19.5.2009 and after following the procedures



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contemplated under the Act with regard to acquisition, award was passed on 31.03.2010 and upon payment of compensation amount in full, notice u/s 3-E (1) dated 18.5.2010 was issued seeking possession of the lands from the land owners. It is the case of the petitioners that compensation amount was also received by the petitioners under the *bona fide* belief that their lands fall within the proposed area of acquisition as notified by the 2<sup>nd</sup> respondent.

4. It is the averment of the petitioner that chainages were marked on the road by the 3<sup>rd</sup> respondent on NH-66 and the chainage marked on the Pondicherry arch is KM 3/520 and only then for the first time, the petitioners noticed that the properties under acquisition are coming within the stretch of lands that fall within Km 3/500 to 3/600 and do not fall within the stretch of Km 3/600 to 37/920. It is the averment of the petitioners that the said stretch do not come within the scope of acquisition whereupon the petitioners came to know that the petitioners lands have been included in the land acquisition notification without jurisdiction. After collecting all the necessary particulars with regard to the erroneous acquisition of lands the petitioners sent detailed representation to the respondents to withdraw the land acquisition and get back



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the award amount from the petitioners, which was rejected by the respondent against which the present petitions have been filed.

5. Learned counsel appearing for the petitioners submitted that once the Court has admitted the petitions and called for the original records, it is the duty of the respondents to place before the court the original records, as the original records alone would prove the falsity of the respondents claim with regard to acquisition. It is the submission of the learned counsel that the original file alone will reveal the approval granted by the 1<sup>st</sup> respondent and the nature of works that come within the approval granted by the 1<sup>st</sup> respondent and also the requirement of lands of the petitioners lying in KM 0/000 to 3/600.

6. It is the further submission of the learned counsel that notice u/s 3-C calling upon the petitioners to attend the enquiry were not issued to the petitioners as claimed by the respondents and the petitioners did not attend the enquiry and the non-participation of the petitioners in the enquiry for want of notice u/s 3-C vitiates the acquisition proceedings.



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7. It is the further submission of the learned counsel that there is a constitutional bar for the acquisition of lands by the authorities otherwise than in accordance with law and the acquisition beyond the scope of the notified public purpose is nothing but a misuse and colourable exercise of power by the respondent without jurisdiction, which vitiates the entire acquisition proceedings. It is the further submission of the learned counsel that mere delay and stage of the case would not be a ground to deny the relief to the petitioners as the whole fraud committed by the respondents in the acquisition process had come to light only after the passing of the award and receipt of compensation by the petitioners. Therefore, this Court, under its inherent jurisdiction, could very well interfere with the acquisition process.

8. It is the further submission of the learned counsel that the writ petitions are very well maintainable even after passing of the award and receipt of compensation and principle of estoppel would not come into play for the simple reason that the entire acquisition process culminating in the passing of the award and payment of compensation is beyond the notification and the proposal approved by the 1<sup>st</sup> respondent. It is the further submission of the



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learned counsel that the actual location of the properties of the petitioners do not fall between KM 3/600 and 37/920, and the properties fall beyond the actual chainage and, therefore, their properties do not come within the purview of acquisition approved by the 1<sup>st</sup> respondent.

9. It is the further submission of the learned counsel that the notification issued u/s 3-A did not contain the project details so as to enable the land owners to know about the exact acquisition of lands. It is the further submission of the learned counsel that the non-furnishing of the details of the acquisition in the notification issued u/s 3-A prevented the petitioners from consulting technical experts to ascertain the legal necessity of 60 m right of way for four lane National Highway as per the specifications of the Indian Road Congress and only after the entire acquisition proceedings completed in the culmination of the award and payment of compensation, the petitioners came to know that the project has not been technically approved and that the 1<sup>st</sup> respondent has not given clearance for the acquisition of lands beyond the stretch of KM 3/600 to KM 37/920.



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10. It is the further submission of the learned counsel that the lands of the petitioners fall beyond KM 3/600 and KM 37/920, which stretch alone has been approved for acquisition by the 1<sup>st</sup> respondent by issuance of Government Gazette, the act of the 3<sup>rd</sup> respondent in acquiring lands, beyond the approved stretch is wholly impermissible and is nothing but a fraud perpetrated on the petitioners for reasons best known to the 3<sup>rd</sup> respondent. It is therefore the submission of the learned counsel that the act of the 3<sup>rd</sup> respondent in acquiring lands beyond the approved plan is nothing but a fraud perpetrated to enrich the private contractors.

11. It is the further submission of the learned counsel that the land acquisition beyond the required stretch did not have the approval of the Central Government and the notification u/s 3-A (1) by the delegated authority is against Rule 3 of the National Highways Rules and, therefore, is *ab initio void*. It is the further submission of the learned counsel that the names of the petitioners were not published in the notification issued u/s 3-A and, therefore, the petitioners could not make objections within 21 days from the date of notice, which is violative of Section 3-A (2) of the Act.



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12. It is the further submission of the learned counsel that when the Gazette notification permits the competent authority to acquire lands that fall within a particular stretch, inclusion of the petitioners' properties which does not fall within the approved stretch is beyond the powers of acquisition by the competent authority and is nothing but an abuse of power. It is the further submission of the learned counsel that the drawings of the scheme clearly show the widening and acquisition is only from KM 3/600 onwards and only after filing of the writ petitions, attempts are made by the 3<sup>rd</sup> respondent to widen the stretch from KM 3/520 to KM 3/600, that too without the approval of the 1<sup>st</sup> respondent, which is wholly illegal and is done only with a *mala fide* intent. It is the further submission of the learned counsel that the respondents cannot, under the concept of land banking, acquire additional lands and keep the same with them for use for purposes other than public purposes at a later date, which is not envisaged under the land acquisition process and such a procedure would very much jeopardize the land owners, whose lands are in no way required for the purpose for which acquisition is made.



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13. It is the further submission of the learned counsel for the petitioners that though Advocate Commissioner was appointed to find out the actual facts with regard to the acquisition, however, due to non-cooperation of the respondents, the Advocate Commissioners could not effectively complete their job. However, report along with photographs have been filed by the Advocate Commissioners with regard to the inventory taken, which clearly show that the stretch KM 3/520 to KM 3/600 is a heavily built up area and the right of way, overall width of the road available in front of the properties in the said stretch of the road is in the range of 28.5 m to 30 m and that 24X7 four lane is already available with centre median dividing the same in front of the properties. It is the contention of the petitioners that when lands situated in KM 0/0 to KM 3/520 which is heavily built up and the right of way, overall width of the road within Pondicherry limit is taken into consideration and exemption from acquisition is granted, not excluding the lands of the petitioners, which is falling within KM 0/000 to KM 3/520 from land acquisition for providing four lanes is nothing but colossal discrimination and as such the notification is violative of Articles 14 and 15 of the Constitution.



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14. It is the further submission of the learned counsel that the award passed is arbitrary and is a blatant violation of the provisions of Section 3-G (7) of the Act as the amount arrived at by the 2<sup>nd</sup> respondent in the award does not take into account all the four factors enumerated in sub-clauses (a) to (d) of Section 3-G (7) and, therefore, the said award is liable to be quashed. It is the further submission of the learned counsel that when Article 300-A mandates payment of compensation is *sine qua non* for acquisition of lands, respondents cannot usurp the lands of the petitioners by paying pittance under the guise of compensation. For all the aforesaid reasons, learned counsel submits that the present writ petitions are liable to be allowed by interfering with the acquisition proceedings.

15. Learned Addl. Government Pleader appearing for the 2<sup>nd</sup> respondent submitted that Gazette notification u/s 3-A (1) was issued on 16.1.2009, which was published in vernacular newspapers on 13.2.2009. The notice of enquiry was issued to the petitioners on 23.3.2009 fixing the date of enquiry as 9.4.2009. The petitioners and other similarly situated land owners, whose lands were sought to be acquired, submitted their objections for the acquisition, which were



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considered by the 2<sup>nd</sup> respondent and they were rejected and the order of rejection was communicated to the petitioners, which were also duly served. It is further submitted by the learned Addl. Government Pleader that 3-D notification was issued on 27.7.09.

16. It is the submission of the learned Addl. Government Pleader that once the petitioners had submitted their objections and partaken in the enquiry process, the petitioners cannot now turn back and claim that they had come to know of certain facts, which were not within their knowledge when the notification u/s 3-A (1) was issued. It is the submission of the learned Addl. Government Pleader that the notification u/s 3-A (1) is required to be in brief and not exhaustive and even on the basis of the said notification, which according to the petitioner's claim, their lands have not been notified, yet they submitted their objections. However, Section 3-D notification, which gives the details of the lands, which are sought to be acquired, is issued after the concurrence of the Central Government upon the objections being rejected by the appropriate authority u/s 3-C (2) and a report as to the lands sought to be acquired is submitted to the Central Government and thereupon, the Central



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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) to Section 3-A. It is therefore the submission of the learned Addl. Government Pleader that the Declaration u/s 3-D having been issued by the Central Government upon the report of the competent authority pursuant to the enquiry u/s 3-C (2), the claim of the petitioners that the Central Government approval was not available for the acquisition is wholly erroneous and is an argument woven for extracting the sympathy of this Court.

17. It is the further submission of the learned Addl. Government Pleader that when the petitioners have participated in the enquiry and also submitted their objections, it is not open to the petitioners to now turn back and claim that they were unable to submit any objections due to paucity of time and also on account of the fact that they were not aware that their lands were sought to be acquired. It is the submission of the learned Addl. Government Pleader that when the records would reveal the participation of the petitioners in the enquiry and also the submission of objections and, therefore, their claim of not able to



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file any objections in the affidavit clearly reveal that they have approached this Court with unclean hands and suppressed material facts.

18. It is the further submission of the learned Addl. Government Pleader that the writ petitions are not maintainable, as not only the land acquisition proceedings have been culminated in the passing of the award, but the award amount has been received by the petitioner and only after receiving the award amount and coming to know of the potential value of the property, the petitioners have now turned back to claim that their lands have not been notified for acquisition. Once an award is passed and compensation has been passed on to the land owners, the land owners are estopped from challenging the acquisition proceedings and the petitioners having received the compensation amount subsequent to the award, their challenge by way of the present writ petition is not maintainable. The fraud, alleged by the petitioners, having said to be committed by the respondents is nothing but the last straw, which the petitioners are trying to hold on to their lands to have the acquisition proceedings quashed.



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19. It is the submission of the learned Addl. Government Pleader that the public purpose has to be envisioned by this Court while taking into account the acquisition and even without admitting, if there are minor discrepancies in the acquisition process, though it does not affect the substratum of the acquisition proceedings, the Courts shall not ordinarily interfere with the acquisition, unless it is shown that the entire acquisition stands vitiated on account of the same. In the case on hand, learned Addl. Government Pleader submits that the discrepancies, even if taken at face value, could only be said to be minor discrepancies, which will not vitiate the acquisition and, therefore, the petitioners prayer for quashing the acquisition proceedings does not arise.

20. It is the further submission of the learned Addl. Government Pleader that the acquisition of land had been approved keeping in mind the additional requirements due to explosion of vehicular traffic and the need to provide for further amenities and only after considering all the aspects acquisition has been approved. The allegation of mala fides by the petitioners relates to technical matters, which have been considered by the technical experts and the courts



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shall not interfere with the technical aspects and substitute its opinion, which has been the consistent ratio laid down by the Court.

21. It is the further submission of the learned Addl. Government Pleader that balancing the conflict of interest between the land owners and the necessity for acquisition of lands for further expansion are best left to the experts and Courts should not infuse its hands into the said matter. All the aspects have been considered by the respondents before approving the acquisition and merely because the petitioner is possessed of certain materials, which, according to him, reflects *mala fide* act would not be a ground to interfere with the acquisition process and, accordingly, prays for dismissal of the present petitions.

22. Learned Senior Central Government Standing Counsel appearing for the 1<sup>st</sup> respondent, while concurred with the submissions advanced by the learned Addl. Government Pleader appearing for the 2<sup>nd</sup> respondent, further submitted that compensation has been paid to all the petitioners, which they have also received and if approval had not been granted by the Central Government for the acquisition of lands, financial sanction and allotment of



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finance would not have been approved by the Central Government. Therefore, the contention of the petitioners that approval has not been granted by the Central Government is wholly erroneous.

23. It is the further submission of the learned standing counsel that the mere mention of the stretch in the Government Gazette with regard to acquisition would not bar the acquisition of lands as the notification u/s 3-A (1) does not anywhere reveal that only the lands from KM 3/600 to KM 37/920 alone are required for public purpose. It is the further submission of the learned standing counsel that for the purpose of providing service road, median, shifting of utilities, etc., which are already available, the lands of the petitioners are sought to be acquired, which works have been included in the project report. Therefore, the contention of the petitioners that the description of the petitioner's land in the notification u/s 3-A (1) is not descriptive cannot be a ground to hold that the petitioner's land has not been notified for acquisition. Accordingly, he prays for dismissal of the writ petitions.



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24. 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.

25. It is the admitted case of the parties that pursuant to the acquisition proceedings, which was initiated, the same culminated in the passing of the award on 31.03.2010 and compensation has also been received by the petitioners in the month of May, 2010. However, it is the case of the petitioners that only after receiving the compensation, it came to light that the acquisition itself did not have the authority of law, which necessitated the petitioners to take recourse to legal proceedings, as the representation filed by them got rejected.

26. Though many contentions have been advanced on behalf of the petitioners, the pivotal contention pertains to the acquisition of the petitioners lands, which have not been notified for acquisition. In this regard, the petitioners rely on the Government Gazette in which the notification u/s 3-A (1) has been published wherein the stretch of land from KM 3/600 to KM 37/920



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alone is shown for acquisition and the petitioners lands not being in the said stretch cannot be acquired as the said acquisition is without proper sanction of the Central Government. It is the further stand of the petitioners that there is no technical approval for the above acquisition, as the said lands have not been part of the technical evaluation for the purpose of formation of the lane and, therefore, without proper approval, the acquisition of lands cannot be made.

27. For appreciation of the issue raised above, it is necessary to advert to the notification issued u/s 3-A (1) dated 16.1.2009, the relevant portion of which is quoted hereunder :-

*“S.O. 174 (E).- In exercise of the powers conferred by sub-section (1) of Section 3A of the National Highways Act, 1946 (48 of 1956) (hereinafter referred to as the said Act) the Central Government, after being satisfied that for the public purpose the land, the brief description of which is given in the Schedule below is required for building (widening/four laning, etc.), maintenance, management and operation of National Highway No.66, on the stretch of land from KM 3/600 to KM 37/920 (Pondicherry – Tindivanam section) in Villupuram District in the State of Tamil Nadu, hereby declares its intention to acquire such land.”*



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28. The above notification clearly reveals that only brief description of lands are given in the schedule, which are required for widening/four laning, maintenance, management and operation of National Highway on the stretch of land from KM 3/600 to KM 37/920. The stretch noted in the notification is from KM 3/600 to KM 37/920. However, it is to be pointed out that the notification has to be read in close association with the project report and it cannot be read in isolation. It is the stand of the respondents that the project report details the requirements for the road widening project and the lands required in and around the stretch also will form a conjunction while acquisition proceedings are carried on, which alone would take the project to its logical end.

29. It is to be pointed out that though stretch is shown in the notification, however, it should be borne in mind that the stretch given is only for the purpose of demarcating the place from which the existing two way lane would be widened into a four way lane, as, before that stretch four way lane exists, which is not in dispute. In the above backdrop, a careful perusal of the notification reveals that the acquisition is for the purpose of maintenance, management and operation of the four way lane which is an extension from the earlier four way



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lane and, necessarily, some improvements would be required of the existing four way lane to be connected to the present four way lane, which is proposed to be laid and in such a scenario, necessarily lands in and around the existing four way lane would be required to be acquired for the purpose of making the said improvements. Any other interpretation would defeat the purpose of the acquisition and the project would not be a wholesome one, but a broken one, which would not meet the standards prescribed.

30. Further, it is also evident from the project report that the stretch falls between Pondicherry – Tindivanam – Villupuram and the lands abut two different districts. Though the report would reveal the places in which extension/modification of the highway is to be made and the place where the widening/four laning is to be done, the lands that are required for the project would be evident only from the survey numbers, which are clearly shown in the notification u/s 3-A (1). The lands of the petitioners have been shown in the notification. However, thereto, the petitioners claim that detailed description of the lands have not been given, which prevented them from filing the objections.



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31. In this regard, a careful perusal of Section 3-A, which is extracted below, reveals that only brief description is needed to be given in the notification and no detailed description is necessary. The relevant portion of the said provision is quoted hereunder :-

***“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) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.”*

32. It is evident from sub-section (2) to Section 3-A that it is only brief description of the land, which is to be given and that the substance of the notification to be published in the newspapers, which is provided for in sub-section (3) to Section 3-A. From the above, it is amply clear that the lands, which are required for the purpose of the project finds mention in the notification and merely because the notification speaks about the stretch to be widened, it



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cannot be taken that only the lands in the said stretch alone are to permitted to be acquired, as the notification should be read as a whole and not in isolation.

33. When the notification clearly speaks about the survey numbers of the lands, which are to be acquired and the lands of the petitioners are also shown in the said notification as required for the road widening/four laning of the national highway, merely because the stretch that is to be widened has been stated in the notification cannot be taken to mean that no other land, other than the land in the stretch, which is to be widened should be acquired. It is to be pointed out that there may lie a land, which falls in the middle, i.e., one portion falling in the stretch, which is to be widened and the other portion either prior to or beyond the widening of the road and in such cases, it would be very well within the discretion of the acquisition authority to acquire the said lands, which are either lying prior to or beyond the widening of the road, in the interest of the project, so that the public purpose does not get stalled. In the present case, the lands of the petitioners, which falls prior to the said stretch, which have already been four laned, but, which, according to the respondents, are required for the purpose of continuity of the four way laned stretch and which is sought to be



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acquired on the basis of the notification, the mere mentioning of the stretch in the notification would not be a bar for the respondents to acquire the lands of the petitioners.

34. The Hon'ble Supreme Court in the case of ***Pratibha Nema & Ors. – Vs – State of M.P. & Ors. (AIR 2003 SC 3140)*** reiterating the power of the Courts to strike down acquisition proceedings and its implication to the public and sounding a note of caution, held as under :-

*“38. When no prejudice has been demonstrated nor could be reasonably inferred, it would be unjust and inappropriate to strike down the notification under Section 4 (1) on the basis of a nebulous plea, in exercise of writ jurisdiction under Article 226. Even assuming that there is some ambiguity in particularizing the public purpose and the possibility of doubt cannot be ruled out, the constitutional Courts in exercise of jurisdiction under Article 226 or 136 should not, as a matter of course, deal a lethal blow to the entire proceedings based on the theoretical or hypothetical grievance of the petitioner. It would be sound exercise of discretion to intervene when a real and substantial grievance is made out, the non-redressal of which would cause prejudice and injustice to the aggrieved party. Vagueness of the public purpose, especially in a matter like this where it is possible to take two*



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*views, is not something which affects the jurisdiction and it would, therefore, be proper to bear in mind the considerations of prejudice and injustice.”*

35. Further, it is even evident from the representation given by the petitioners to the 3<sup>rd</sup> respondent that their lands do not come within the purview of the proposed four way lane and it is on the chainage 3/589, which is a bit prior to the stretch, which is shown in the notification. However, the site of the project, which is annexed by the petitioners in the typed set of documents carries the description of project highway and for better understanding the same is extracted hereunder :-

*“The Zero Chainage of the Project Highway commences at ‘Indira Gandhi Square’ at Pondicherry and runs for a length of 3.6 kms within the urban limits of Pondicherry. The Project Highway traverses towards north and runs through a few rural/urban settlements, viz., Tirucitambalam, Kiliyanur, Tallapuram, Kondamur and Marakknam junction and merges with the existing NH 45 at km 37/920 in Tindivanam in the State of Tamilnadu. The Project Highway stretch from Km 0/000 (existing rotary with statue of Smt.Indira Gandhi) to Km 3/600 lies in the Union Territory of Pondicherry and the remaining stretch of the Project*



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*Highway from km 3/600 to km 37/920 lies in the Villupuram district of Tamilnadu State.”*

36. Therefore, as aforesaid, the balance stretch of the Highway is being converted into a four way lane, which requires acquisition of land and the notification which prescribes the stretch is only to show the stretch, which is to be converted into a four way lane and in the said backdrop, it should not be inferred that the lands only in that stretch should be acquired and any land on either side of the stretch cannot be acquired and any such construction given would have a deleterious effect on the formation of the National Highway. Therefore, as stated above, the notification should be read in conjunction with the project report, which alone would disclose the acquisition to be made keeping in mind the conveniences which are ought to be made enroute in the National Highway for the safe and unhindered movement of vehicles as also for the commuters. The decision in *Prathiba Nema's case (supra)* would stand squarely attracted to the case on hand and the mere fact that stretch has been shown while lands notified do fall a bit prior or beyond the said stretch is no ground to dislodge the entire acquisition as bad as such an exercise of discretion



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would defeat the interests of the public in favour of private interest. The Hon'ble Supreme Court has, time and again, cautioned that larger public interest should prevail over private interest while exercising discretion under Article 226 of the Constitution. Therefore, mere ambiguity in the notification relating to the stretch while the details of the lands sought to be acquired have been shown cannot be said to affect the petitioners, thereby causing prejudice and a defeat of their interest, which would be subsumed by the public purpose for which the project is being implemented.

37. It is also to be pointed out that the lands which are required for the purpose of widening of the road into a four way lane is decided on the basis of the technical specification given by the experts, who take into account the necessity for certain specifications in the Highways such as culverts, centre median, service roads, etc. Such matters of technical nature, therefore, would be within the realm of the experts to deliberate and decide and courts should not enter into the domain of technical experts and substitute its opinion, which has been the consistent view of the Courts. The Hon'ble Apex Court in ***Union of India – Vs – Kushala Shetty (2011 (12) SCC 69)*** has spoken about the technical



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expertise of the National Highways and for better appreciation, the relevant portion of the decision is quoted hereunder:-

*“24. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it is found to be ex-facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained.”*



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38. Further, as stated in the aforesaid decision, the projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways and the National Highways is manned by experts having vast knowledge and expertise in the field of highway development and maintenance, who take into account all the factors, including the public purpose involved. Further, it is also to be noted that the acquisition is also made keeping in mind the future necessities of the project and future expansion due to explosion of vehicular traffic. Such being the case, when the project has been approved for which acquisition has been made and financial approval has also been provided by releasing the necessary finance, which has been paid as compensation to the petitioners and the petitioners having received the compensation, the Court should not sit over the opinion of the experts to say whether the lands of the petitioners are required or not for the purpose of widening of the four way lane.



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39. The next of the contention raised by the petitioners pertains to the enquiry conducted u/s 3-C. It is the stand of the petitioners that the petitioners were not provided with the requisite time of 21 days to file their objections and the petitioners could not file their objections.

40. In this regard, the tabulated statement submitted on behalf of the respondents show that 3-A notification was published in the newspapers on 13.2.2009 and enquiry notice was issued to the petitioners on 23.3.2009 fixing the date of enquiry as 9.4.2009. The petitioners have not disputed the aforesaid dates nor the issuance of notice for the enquiry upon them. This Court has already held the sufficiency of the notification u/s 3-A. The period of 21 days to be provided to the persons interested in the land for submitting their objections is provided in Section 3-C and for better appreciation, the said provision is extracted below :-

***“3-C. Hearing of objections.- (1) Any person interested in the land, may, within twenty-one days from the date of publication of the notification under sub-section (1) of Section 3-A, object to the use of the land for the purpose or purposes mentioned in that sub-section.***



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*(2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.*

*(3) Any order made by the competent authority under sub-section (2) shall be final.”*

41. It is evident from the materials available on record that publication u/s 3-A was made on 13.2.2009 and enquiry was fixed u/s 3-C (1) on 9.4.2009. Between 13.2.2009 and 9.4.2009, there is definitely a period of 21 days, as mandated u/s 3-C (1) available for the land owners/persons interested in the lands, whose lands are notified for acquisition, to file their objections. Therefore, there is no infraction of Section 3-C (1) of the Act.

42. This Court having held that the gazette notification u/s 3-A (1) sufficient and which has resulted in the paper publication on 13.2.2009, it is for the land owners/persons interested in the lands to submit their objections. It is



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the case of the respondents that all the petitioners submitted their objections within the stipulated period of 21 days, which was taken into account while enquiry was conducted u/s 3-C and the competent authority, after affording an opportunity of hearing to the petitioners and also taking into consideration the objections filed, disallowed the objections and the said order passed u/s 3-C (2) was communicated to the petitioners on 11.9.2009, which attained finality u/s 3-C (3). No material to the contra has been placed before this Court to negate the stand of the respondents with regard to compliance of Section 3-C.

43. Further, the petitioners have also been granted with an opportunity of personal hearing and after hearing the petitioners, and taking into consideration their written objections, their stand has been disallowed by the competent authority u/s 3-C. Therefore, the violation of principles of natural justice advanced by the petitioners also does not merit acceptance. Such being the case, necessary inference is that the respondents have duly complied with Section 3-C in giving the requisite time to the petitioners to file their objections and that the objections filed by the petitioners have also been taken into consideration in the enquiry where personal hearing was granted before



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disallowing the objections of the petitioners and, therefore, the contention of the petitioners to the contra is wholly unsustainable.

44. Coming to the question of maintainability of the writ petitions, while it is the stand of the respondents that the writ is not maintainable, as the acquisition proceedings are over and award had been passed and compensation has been paid to the petitioners, however, the stand of the petitioners is that the *mala fide* intent and fraud committed by the respondents could be questioned even after receipt of compensation by the petitioners.

45. Much of the contentions of the petitioners relating to fraud and *mala fide* intent stems from the fact that lands of the petitioners are beyond the stretch of lands notified in the notification issued u/s 3-A and, therefore, it is the stand of the petitioners that only with a clandestine motive, the respondents are trying to usurp the lands of the petitioners. Further, the petitioners lay their claim based on Article 300-A of the Constitution. However, the discussion of this Court above reveals that the notification speaks about the lands to be acquired and the survey numbers of the petitioners lands finds place in the notification.



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The basis of attack of the petitioners is only on the strength of the stretch notified in the notification, which has been negated by this Court. Except for the above, no other *mala fide* intent, which would show that the respondents have indeed acted in a manner, which would prejudice the petitioners have been placed before this Court to justify the fraud committed by the respondents. Further, it is to be pointed out that the Central Government had approved the project and financial sanction as also release of finance for payment of compensation based on the award had been made by the appropriate authority. Such being the case, the stand of the petitioners that it is a fraud perpetrated by the respondents to usurp the lands of the petitioners, has not been established by any material, but for the aforesaid technical issues, raised as grounds in the writ petitions. Such technical issues cannot be termed to be *mala fides*, which strike at the substratum of the acquisition to hold that a writ could be filed even after receipt of compensation by the petitioners. Further, the contention with regard to land banking being undertaken by the respondents cannot be inferred as this Court has already pointed that the necessity of acquisition of lands beyond the stretch is on the basis of the project report and the notification and project report has to be read in tandem to find out the necessity for acquiring



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the lands and the technicalities, which have been mentioned in the project report cannot be gone into by this Court as the opinion of this Court cannot be substituted for the opinion of the technical experts. Therefore, the submission of land banking advanced by the petitioners cannot be accepted.

46. Further, one other striking aspect which stares writ large on the petitioners is the fact that materials were very much available in the public domain with regard to acquisition. Yet, the petitioners, beyond the objection made u/s 3-C, have conceded to the acquisition process and have not made any objection even to the notice issued u/s 3-G (3) with regard to determination of compensation. In fact, it is the stand of the respondents that the petitioners have consented to the acquisition and have received the compensation, way back in May, 2010 and only after receiving the compensation, the petitioners have filed the writ petitions.

47. It is to be noted that the acquisition process started in January, 2009 and culminated into the passing of the award and payment of compensation in May, 2010, which covers a span of about 18 months. Though the petitioners



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state that they made every attempt to lay hands on the project report and other materials to satisfy themselves about the veracity and legality of the acquisition, however, they could not succeed. In fact, it is the specific averment of the petitioners that immediately on the notification being published, as they could not obtain the necessary papers, they consulted technical and legal experts regarding the same and, thereafter, made their objections. Yet, the petitioners have not come before this Court at the initial stage to claim that the papers, which are material, are not available for perusal, as provided under the Act, which precluded them from contesting the acquisition at the earliest point of time. The petitioners having sat over the matter for more than 18 months and after completion of the acquisition process and after receiving the compensation, after a lapse of about six months, have filed the present writ petitions claiming that certain facts came to light only at a later point of time, which necessitated the filing of the writ petitions.

48. It is to be pointed out that affixing of chainage boards led the petitioners to identify that their lands do not fall within the stretch, but the petitioners want this Court to render a finding that without the chainage, the



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respondents could identify that their lands would fall beyond the chainage, yet they had a *mala fide* intent to acquire the petitioners lands. Without establishing *mala fide* intent, the petitioners cannot maintain the writ petitions and the decisions cited to canvass the aforesaid plea with regard to maintainability of the writ petitions would not hold water. It is to be pointed out that *mala fide* intent has to be established and it cannot be inferred from the mere contentions of the petitioners, more so in case of this nature, where larger public purpose and interest is involved. Further, it is the petitioners who ought to be vigilant enough right from the word go to challenge the acquisition process, but without doing so, acceding to the acquisition process and receiving the compensation without any demur, the petitioners cannot later turn back and claim that the misrepresentations of the respondents resulted in the acquisition of petitioners lands, which shows *mala fide* act, necessitating filing of the present writ petition. If this Court accepts the said proposition advanced by the petitioners, then every land acquisition proceedings would be challenged posterior in point of time to payment of compensation claiming that there was misrepresentation. This was definitely not the intent of any of the decisions referred to by the petitioners.



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49. Further, it is to be pointed out that the decisions of the petitioners touch on challenge made to the acquisition after passing of the award and before taking physical possession. However, in the case on hand, not only had award been passed, but the petitioners have received the compensation and notice for handing over the property was also issued to the petitioners. But for the stay of dispossession granted by this Court in the writ petitions, possession of the property would have been taken. The petitioners have not only been enjoying the property till date due to the order of stay, but also have been enjoying the compensation received and it would not lie in the mouth of the petitioners to contend that they would deposit the compensation received by them with the respondents after holding on to it for more than 12 years. Therefore, the petitions filed by the petitioners after receipt of compensation subsequent to passing of award are wholly not maintainable.

50. Further, an ancillary contention has been raised in the written submission of the petitioner in which it has been claimed that compensation has not been properly considered and paid and it is not in consonance with Section



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3-G (7) of the Act. Determination of compensation is provided for u/s 3-G, wherein sub-section (5) therein stipulates that where the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

51. It is to be pointed out that without any demur the petitioners have received the compensation. They have not raised any issue with regard to the meagre compensation received by them. If at all the petitioners have any grievance against the quantification of compensation amount, the procedure is provided under sub-section (5) of Section 3-G. In such a backdrop, the only recourse open to the petitioners, if at all they feel that the compensation paid is not properly quantified, they may resort to arbitral proceedings by submitting necessary application and they cannot claim that as a ground to prevail upon this Court to set at naught the acquisition proceedings.



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52. Though the learned Addl. Government Pleader had pressed into service the decision of the Division Bench of the Allahabad High Court in the case of ***Smt. Prabha Shukla – Vs – State of U.P. & Ors. (Writ. C. No.18526/2021 dated 5.1.2022)*** by submitting that even if there is any violation of certain legal requirement, the persons would be entitled to a particular amount of damages to be awarded as a lumpsum, however, the said decision does not require any scrutiny at the hands of this Court for the simple reason that for the discussion aforesaid, this Court has categorically held cannot that there has been no procedural flaw warranting such extraordinary course of action to be adopted and the whole premise on which the case has been set forth is on the *mala fide* acts of the respondents, which, as held above, has not been established. Such being the case, there is no question of payment of any amount towards violation of any legal requirement.

53. However, if the petitioners want to avail of enhanced compensation for the lands which have been acquired, the right course open to the petitioners is to file appropriate application u/s 3-G (5) of the Act and in such a case, it is the



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duty of the 1<sup>st</sup> respondent to refer the matter to the competent authority for quantification of enhanced compensation.

54. For the reasons aforesaid, the writ petitions are devoid of merits and, accordingly, the same are dismissed. The stay of dispossession of the lands granted by this Court stands vacated and the respondents are directed to take possession of the subject lands by following the due process of law. Consequently, connected miscellaneous petitions are closed. However, liberty is granted to the petitioners to seek for enhanced compensation as provided u/s 3-G (5) of the Act by filing appropriate application within a period of four weeks from the date of receipt of a copy of this order and on such application being filed within the aforesaid period, the respondents are directed to consider the same in terms of Section 3-G (7) of the Act and pass appropriate orders on the same within a period of six weeks thereafter. Further, it is made clear that the period during which these writ petitions were pending before this Court shall be excluded while computing the period of limitation for filing appropriate application seeking enhanced compensation. There shall be no order as to costs.



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**25.11.2022**

Index : Yes / No

Internet : Yes / No

GLN

To

1. The Secretary to Government  
Ministry of Shipping, Road Transport  
& Highways, Government of India  
New Delhi.
2. The Competent Authority &  
Special District Revenue Officer  
National Highways  
O/o the Villupuram District Collectorate  
Villupuram, Tamil Nadu
3. The Project Director  
National Highways Authority of India  
No.10, Govindasamy Nagar  
Vazhudhareddy Post, Villupuram 605 401.



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**M.DHANDAPANI, J.**

**GLN**

**PRE-DELIVERY ORDER IN  
W.P. NOS. 15155 TO 15163,  
18917 & 24634 OF 2010**

**Pronounced on  
25.11.2022**