



WEB COPY



WP.Nos.6954 of 2011 etc batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

WP.Nos.6954, 6955, 6956, 6958, 7210, 7249, 7581, 7824,
7825, 8276, 8654 & 8655 of 2011

and

M.P.Nos.1 of 2013 (12 petitions) and 2 of 2011 (12 petitions)

W.P.No.6954 of 2011

St.Jude's Church

Represented by Parish Priest

Rev.Father G.J.Jerry Stephen

No.9, Medavakkam Main Road

Vanuvampet, Chennai – 600 091

.. Petitioner

Versus

1.Secretary to Government of Tamil Nadu

Highways and Minor Ports Department

Secretariat, Chennai – 600 009

2.Divisional Engineer (Highways)

Chennai Metropolitan Development Plan (CMDP)

Division -1, Chennai – 600 032

3.Special Deputy Collector (Land Acquisition)

Tamil Nadu Urban Development Project Phase III

MG Nagar Main Road

Near Vigneswara Theatre

Poonamallee, Chennai – 600 056

.. Respondents

Prayer in W.P.No.6954 of 2011: Writ Petition is filed under Article 226 of the Constitution of India praying to (i) to call for the records in G.O.268, Highways and Minor Ports (HW2) dated 13.8.2010 on the file of the 1st respondent issued under Section 15(1) of the Tamil Nadu Highways Act 2001 (Tamil Nadu Act 34)



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and two consequential notices in file No. Na.Ka.412/2007/A1 dated 22.01.2011 issued by the 3rd respondent for compensation enquiry and for delivery of possession of the property covered under said notices and quash the entire proceedings insofar as the property of the petitioner is concerned and (ii) consequentluy forbear the respondents from acquiring the property of the petitioner mentioned as Government, dry, T.S.No.16(old Survey No.259 part) now sub-divided as T.S.No.16-2, belonging to St.Jude's Church, bounded by the north by T.S.No.11, east by T.S.No.15, South by T.S.Nos.25 and 17/1 and west by Ward-E-0.0075.0 square metres in G.O.268, Highways and Minor Ports (HW2) dated 13.8.2010 on the file of the 1st respondent but described in the notices of the 3rd respondent as part of compound wall, glass shell and the matha statue, glass shell and jesus statue, grill gate in part of Survey No.259, part of Town Survey No.16, Tambaram Taluk, Ward No.F and Block No.15.

For Petitioners : Mr.N.S.Nandakumar (in all cases)
For Respondents : Mr.G.Krishnaraja (in all cases)
Additional Government Pleader

COMMON ORDER

The petitioners are the owners of their respective properties. Their properties were sought to be acquired by the respondents under the Tamil Nadu Highways Act, 2001 (hereinafter referred to as 'Act') for the purpose of widening and strengthening of existing two lane roads named as Mount Madipakkam Four lane roads. In furtherance to the same, notices under Section 15(2) of the Act was issued to the petitioners on 20.11.2009. Immediately after receipt of such notices, the petitioners jointly submitted a representation dated 26.11.2009 and 30.11.2009 stating that there are vast extent of land available adjacent to the existing land; instead of acquiring the said land they are acquiring the petitioners' land which is a loss to Government Exchequer and



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there is a dangerous curve which will create danger to road users. Further, adjacent to the Medavakkam, one of the petitioner who is a priest of church, submitted that the church is also now sought to be acquired. Challenging the acquisition on various other grounds, the writ petitions were filed.

2. The learned counsel for the petitioner submits that the petitioners, raising several grounds with regard to the acquisition, had jointly sent objections to the respondents on 26.11.2009 and 30.11.2009 and none of the objections were properly considered by the respondent. Further, he would submit that the impugned notification was issued without following the procedure contemplated under Section 8 (1) of the Act and personal hearing was not afforded to the petitioners. Hence, the impugned notification is non est in law. Though the notice u/s 15(1) was issued during the year 2010, in the absence of notice u/s 8 (1) and award not having been passed till date and compensation also not having been paid to the petitioners, all the aforesaid aspects vitiate the acquisition and, accordingly, he prayed to allow these writ petitions.

3. The learned Additional Government Pleader submitted that the land acquisition is done on either sides of the existing road and further submitted that as there is no huge extent of government land in the near vicinity, and the road



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has been widened on the right side viz., on the petitioners' and other owners patta land and iterated that the alignment could not be re-done because a six land road and CMRL Line intersects. For buttressing his statement, he further submitted that centre point of intersection of Mount-Madipakkam Road with CMRL & Southern sector project which is already at a height of 1.4m from existing ground level gradually increase in height towards the right hand side of the existing road to approach a high level bridge within 50m from the centre of road. Hence, the land acquisition could not be done on the right hand side. If at all, the road alignment is shifted towards the right hand side, it will lead to a steep slope which would cause accident because of a sudden steep increase in road. Further, it is submitted that lands other than petitioners' land are also being sought to be acquired on either sides. Hence, he seeks to dismiss these writ petitions.

4. Heard both sides and perused the materials placed on record.

5. Admittedly, the facts in the present petitions are not in dispute. In fact, the petitioners lands were sought to be acquired by the respondents under the Tamil Nadu Highways Act, 2001 for the purpose of widening and strengthening of existing two lane roads named as Mount Madipakkam Four lane roads and it



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is also not in dispute that notice under Section 15(2) of the Act was issued on 20.11.2009 and as per the Act, the same was published in the leading newspaper on the 22.11.2009. Thereafter, enquiry was conducted on 30.12.2009. Though the petitioners were aware of the land acquisition proceedings and hearing date, no one appeared before the the enquiring officer and after considering their objections 15(1) notification was issued under G.O.Ms.No.268, Highways and Minor Ports (HW2) on 13.08.2010. However, the present writ petitions are filed mainly on the ground that there is a vast extent of poramboke government land adjacent to the petitioner's land and instead of utilising the same, acquiring private land is unsustainable. Further, the it is to be noted that the status report filed by the respondent makes it clear that no poramboke land is available as alleged by the petitioners. When the ground raise by the petitioners is categorically denied by the respondent, attributing any mala fide to the said acquisition cannot be sustained.

6. Further, in respect of other grounds pertaining to the technical feasibility of shifting the alignment, it has been time and again reiterated by the Hon'ble Apex Court that with regard to technical specifications, the courts should not normally interfere with the opinion of the experts and it is always best left to experts to decide the same.



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WEB COPY 7. The Hon'ble Supreme Court in ***Power Grid Corporation of India Ltd.***

- Vs - Century Textiles & Industries Ltd. & Ors. (2017 (5) SCC 143 , wherein,
it has been held as under :-

“23) Section 10 of the Indian Telegraph Act, 1885 empowers the Telegraph Authority to place and maintain a telegraph line under, over, along or across and posts in or upon any immovable property. The provision of Section 10(b) of the Indian Telegraph Act, 1885 makes it abundantly clear that while acquiring the power to lay down telegraph lines, the Central Government does not acquire any right other than that of user in the property. Further, Section 10(d) of the Indian Telegraph Act, 1885 obliges the Telegraph Authority to ensure that it causes as little damage as possible and that the Telegraph Authority shall also be obliged to pay full compensation to all person interested for any damage 18 sustained by them by reason of the exercise of those powers.

* * * * *

26) We also do not find that the action of the Power Grid, in the given circumstances, by not shifting the transmission lines was arbitrary. From the facts noted above, it becomes apparent that not only it was unfeasible to change the alignment as almost entire work had already been completed by the time the writ petitioner started protesting against this move, even otherwise, the Power Grid has given sufficient explanation to point out that all relevant factors/ aspects were kept in mind while laying down the impugned transmission lines. Such transmission lines had to be in straight line to the extent possible for eliminating loss of transmission. It is also explained that electricity transmission is usually laid or crossed over agricultural land where 19 minimum extent of land



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gets utilised for erecting towers and where agricultural activities are not prejudiced/obstructed in any manner. The purpose is to avoid buildings, religious places, ponds etc. while laying down these transmission lines. It is only when it becomes inevitable that towers are placed on the private lines to the minimum and least extent possible. That is what was tried to achieve in the instant case. Another important factor, which needs repetition at this stage is that no blasting is permissible within 300 mts. from the 400KV line (already existing) or the tower structure. Mining of limestone can be taken up by adopting the methods other than use of explosive/blasting – without damage to the tower foundation/tower structure or the line, which can be accomplished by using jack hammer/pneumatic hammer with compressor so as to avoid any damage to the line or tower. This aspect has also been taken note of by the learned Single Judge of the High Court in the judgment dated March 11, 2008. The Division Bench did not differ with any of these findings.”

8. The Division Bench of this Court in ***T.Thirumalai - Vs - The District Collector & Ors. (2016 SCC OnLine Mad 15421)*** also supports the case of the respondents in respect of the shifting of alignment and for better appreciation, the same is extracted hereunder :-

"34. The objective of the respondents should always be to select the shortest route with the least possible damage to the lands and least detriment to the land owners. We are conscious of the fact that the choice of lands that will provide the shortest route with the least possible damage, may not always be so easy. If the respondents avoid installation of towers on certain lands due to



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their high fertility, the eco- system and the individual land owner are saved. But it may result in the transmission towers being erected on alternate lands that may not provide the shortest route. The consequence of this option is that the cost of the generation and transmission would go up, that would have an impact upon the economy of the country. Therefore, the act of balancing the conflicting interests are best left to experts."

9. From the aforesaid decisions, it is emphatically clear that feasibility is one of the main concerns which need to be addressed, coupled with balancing the conflicting interests, which are the pivotal points to be considered while considering the proposal for shifting the alignment. It has been laid down that those aspects are to be best left to experts and this Court should not sit in the chair of the experts to find out whether the decision taken is proper or not so long as the said decision is within the domains of legality and rationality. In the case on hand, the technical experts upon inspection and submission of report, has chosen shifting of alignment in a particular manner and such being the case, this Court, under the guise of judicial review, cannot import its decision to that of the experts in the field.

10. With regard to the submissions relating to opportunity u/s 8 and Section 15 (1) of the Act, this Court in ***N.R.Marappan – Vs – The District***



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Collector, Erode District & Ors. (2019 (7) MLJ 500), following the decision of

the Hon'ble Supreme Court in **Sri Sannarangappa – Vs – State of Karnataka**

(2017 (12) SCC 797) with regard to grant of opportunity u/s 8 and 15 (1) held

as under :-

“12.1 Sec. 8 (1) provides that the Highways Authority of any division may, by notification, in relation to any highway or any area in that division, where the construction or development of a highway is undertaken or proposed to be undertaken, fix the highway boundary line, building line and control line. The use of the expression 'may, to start with, appears to make the exercise contemplated under Sec. 8 directory and not mandatory.”

11. The Hon'ble Apex Court in *Sannarangappa's case (supra)* has discussed the relevance of issuing notice and hearing the objections with relation to acquisition under the State Highways Act and in that regard, held as under :-

“6. From the above narration of the relevant provisions of the Act it clearly transpires that Section 15 of the State Act is a midway provision that the statute contemplates. What is of significance and which impacts the right of the landowners is the notification under Section 7 of the State Act fixing the highway boundaries, the building lines and the control lines. In respect of such an exercise notice under Section 7(2) of the State Act is contemplated whereby opportunity is given to the landowners to file their respective objections upon consideration of which the proposal can be modified or even abandoned. If at the stage of issuing notification under Section 7 such an opportunity is to be given, once the aforesaid stage is over and the map under Section



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8 is published, acquisition of land as and when necessary under Section 15 is a consequential effect. At that stage, really a second opportunity to object to the acquisition need not be afforded in view of the opportunity already granted under Section 7(2). We, therefore, cannot find any error in the ultimate conclusion recorded by the High Court though our concurrence with the said conclusion is on slightly different grounds, as indicated above.”

12. A perusal of the materials available on record, coupled with the files produced by the respondents reveal that the petitioners were granted opportunity of hearing and their objections were taken at the time of enquiry by the respondents pursuant to the notification issued u/s 15 (1). Further, as held by this Court in *Marappan's case*, Section 8 (1) starts with the use of expression “*may*” which clearly subscribes the only view that the procedure contemplated u/s 8 (1) with regard to fixing of boundary line is directory and not mandatory. In the case on hand, the authority has afforded an opportunity of hearing to the aggrieved land owners and they have ventilated their grievance u/s 8 (1) at the time of enquiry. Further, the decision in *Sannarangappa case (supra)* pertaining to notice was mainly with reference to Section 15 (1) and not pertaining to Section 8 (1). As held in *Sannarangappa's case (supra)*, the land owners are not deprived of their right in entirety by non fixing of boundary line by following the provision u/s 8 (1), as the second stage u/s 15 (1) provides the land owners with their right to object to the acquisition, wherein the issue relating to non-



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fixing of boundary line u/s 8 (1) could also very well be taken. Therefore, the contention relating to a notice not being given u/s 8 (1) would not render the acquisition bad and, therefore, the contention advanced on the said aspect deserves rejection.

13. For the reasons aforesaid, there are no merits in the present petitions stands dismissed. However, the respondents are directed to complete the award enquiry and pass award in terms of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within a period of 12 weeks from the date of receipt of a copy of this order and pay the compensation to the petitioners within a period of 12 weeks thereafter. No costs. Consequently, connected miscellaneous petitions are closed.

23.08.2022

dhk/GLN
Index:Yes/No
Internet:Yes/No

M.DHANDAPANI, J.

dhk/GLN

To,

<https://www.mhc.tn.gov.in/judis>



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