



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.A.Nos.1410, 1363, 1364, 1412 and 1414 of 2022

A.Sankar

... Appellant in W.A.No.1410/2022

S.Balaraman

.. Appellant in W.A.No.1363/2022

A.David

.. Appellant in W.A.No.1364/2022

H.D.Bose @ Danisukumar

.. Appellant in W.A.No.1412/2022

V.Selvakani

.. Appellant in W.A.No.1414/2022

Vs

1. The District Collector,
Chengalpattu District,
Chengalpattu-603 001.

2. The Special District Revenue Office,
Land Acquisition,
Highways, Metropolitan Wing,
Alandur, Chennai-600 016.

3. The Assistant Divisional Engineer (Highways),
Construction and Maintenance,
Tambaram, Chennai - 600 042.

.. Respondents

Prayer: Appeals under Clause 15 of the Letters Patent against the common order dated 05.01.2022 in W.P.Nos.28361, 28331, 28364, 28354 and 28374 of 2021.



WP Common Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records pertaining to acquisition vide impugned Notice Reference No.Na.Ka. 843 / 2009 / AA1 dated 04.02.2021 passed by the 2nd respondent and quash the same in respect of the petitioner.

For the Appellants : Mr.V.Raghavachari

For the Respondents : Mr.P.Muthukumar
State Government Pleader
assisted by
Mr.K.M.D.Mugilan
Government Advocate

COMMON JUDGMENT
(Delivered by the Hon'ble Chief Justice)

These writ appeals have been filed to challenge the judgment and order dated 05.01.2022 passed by the learned Single Judge dismissing the writ petitions to challenge the notice issued under Section 19(5) and 19(7) of the Tamil Nadu Highways Act, 2001 [for brevity, "the Act of 2001"].

2. Learned counsel for the appellants submitted that without acquisition of the land, notices under Section 19(5) and 19(7) of the Act of 2001 were given. It is in ignorance of the fact that earlier also a notice was issued under Section 4(1) of the Land Acquisition Act, 1894 in the year 1976 and published in the official Gazette on 11.02.1976, followed by a declaration under Section 6 on 07.02.1979. A challenge to it was made by a batch of writ petitions led by W.P.No.8131 of 1986. Those writ petitions were allowed, thereby the acquisition proceedings initiated by the respondents was set aside.

3. It is submitted that the respondents caused a notice on 26.2.2016 for eviction under the caption of encroachment and illegal occupation of the land. A challenge to the said notice was made before this Court and the writ petition was disposed of by treating the said notice to be a show cause notice. Thus, a direction was issued to the appellants to submit their objections within a period of two weeks. The appellants then submitted their objections and thereupon the respondents caused a public notice on 23.11.2016 invoking Section 15(2) of the Act of 2001 calling for objections and the appellants submitted their objections. However, a notification under Section 15(1) of the Act of 2001 was published, followed by a notice under Sections 19(5) and 19(7) of the Act of 2001.

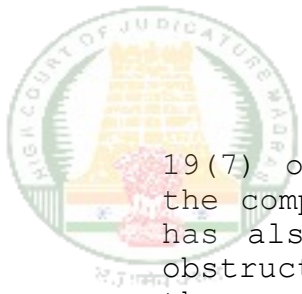


4. Learned counsel further submitted that notice under Sections 19(5) and 19(7) of the Act of 2001 was issued without acquisition proceedings and, therefore, the same is illegal. Objection to the notice was given by the appellants, but the respondents have failed to consider the same and during pendency of the writ petitions, an award was passed on 31.03.2021.

5. The argument of learned counsel for the appellants is even in reference to Section 8 of the Act of 2021 which is to be complied before acquisition by invoking Sections 15(1) and 15(2) of the Act of 2001. In the instant case, notice under Section 15(2), followed by a notice under Section 15(1) was issued without undertaking the exercise to be undertaken under Section 8 of the Act of 2001. Section 8 of the Act of 2001 gives power to the respondents to fix highway boundary, building line or control line etc. In the instant case, without fixing the boundary of the highway, notice under Section 15(2) was issued inviting objection and, in fact, it was submitted. But ignoring the aforesaid, notice under Section 15(1), followed by notice under Sections 19(5) and 19(7) of the Act of 2001 was given. To support the argument, a reference of the judgment of the Apex Court in the case of Sannarangappa v. State of Karnataka and others, (2017) 12 SCC 797 has been given. A specific reference of paragraphs (5) and (8) of the said judgment was given to show that before initiation of the acquisition proceedings the exercise given under Section 8 of the Act of 2001 is mandatory. It is also held that even if the issue aforesaid was not taken before the High Court, that can be allowed to be taken before the Apex Court. Thus, even if the appellants have not taken the issue aforesaid before the learned Single Judge, they are at liberty to take the issue in the appeals. Since the issue aforesaid goes to the root of the case and the boundary of the highway was not fixed as per Section 8 of the Act of 2001, the subsequent proceedings under Sections 15(2) and 15(1) of the Act of 2001 is vitiated.

6. Learned counsel for the appellants has given further reference of the judgment of the Apex Court in the case of Project Director, Project Implementation Unit v. P.V.Krishnamoorthy and others, (2021) 3 SCC 572. Paragraphs (56) to (62) of the said judgment, apart from other paragraphs are referred to strengthen the arguments raised for challenge to the notice issued under Sections 19(5) and 19(7) of the Act of 2001. The prayer is to set aside the notice under Sections 19(5) and 19(7) of the Act of 2001 and also the judgment and order of the learned Single Judge.

7. Learned Government Pleader opposed the appeals and submitted that an award, after notice under Sections 19(5) and



19(7) of the Act of 2001, has already been passed determining the compensation. The said award has not been challenged and he has also produced photographs of the existing highway to show obstructions on the highway on account of the land occupied by the appellants. The photograph of the existing road would be enclosed along with this judgment to have a clear picture of the area under acquisition.

8. Learned Government Pleader further submitted that notice under Section 15(1) of the Act of 2001 was issued after issuance of notice under Section 15(2) to invite objections. The appellants have submitted their objections to the notice issued under Section 15(2) of the Act of 2001 and finding no substance in the objections, notice under Section 15(1) of the Act of 2001 was issued. No challenge to the notice under Section 15(1) of the Act of 2001 was made and in view of the above, to determine the compensation notice under Sections 19(5) and 19(7) of the Act of 2001 was issued. Objection to the aforesaid notice was given and taking into consideration the objection, an award was passed on 31.03.2021, which is not under challenge.

9. Learned Government Pleader submits that the exercise given under Section 8 of the Act of 2001 is required as and when a new highway is to be carved out and for marking of highway boundary and building line etc. The case on hand is not carving of any new highway, but to strengthen the existing highway, as in a very small part, due to the occupation of the land by the appellants, the highway is not broad enough, which may otherwise invite even accidents because the road is passing through thickly populated area which is borne out by the photographs and the map produced. He further submits that the appellants have not challenged the notice issued under Section 15(2) or Section 15(1) of the Act of 2001 on the ground that the acquisition of the land is vitiated in the absence of the exercise given under Section 8 of the Act of 2001. The argument aforesaid is otherwise factual in nature, because as and when a highway is carved out it is only after issuing notice and seeking objection thereto. It is not that a new highway has been carved out, but the existing highway for many years. Thus, the judgment of the Apex Court in the case of Sannarangappa (supra) is not applicable and otherwise the appeal therein was dismissed by the Apex Court despite the dismissal of the writ petition for acquisition of the land for highways. Thus, a prayer is made to dismiss the appeals.

10. We have considered the rival submissions and also scanned the matter carefully.

11. The writ petitions were filed by the appellants to challenge the notice issued under Sections 19(5) and 19(7) of



the Act of 2001. For ready reference, Section 19 of the Act of 2001 is quoted hereunder:

"19. Determination of amount.- (1) Where any land is acquired by the Government under this Act, the Government shall pay an amount for such acquisition, which shall be determined in accordance with the provisions of this section.

(2) Where the amount has been determined by agreement between the Government and the person to whom the amount has to be paid, it shall be paid in accordance with such agreement.

(3) Where no such agreement can be reached, the Government shall refer the case to the Collector for determination of the amount to be paid for such acquisition as also the person or persons to whom such amount shall be paid:

Provided that no amount exceeding such amount as the Government may, by general or special order, specify, to be paid for such acquisition shall be determined by the Collector without the previous approval of the Government or such officer as the Government may appoint in this behalf.

(4) Notwithstanding anything contained in sub-section (3), after the case is referred to the Collector under that sub-section, but before he has finally determined the amount, if the amount is determined by agreement between the Government and the person to whom the amount has to be paid, such amount shall be paid by the Collector in accordance with such agreement.

(5) Before finally determining the amount, the Collector shall give an opportunity to every person to whom the amount has to be paid to state his case as to the amount.

(6) In determining the amount, the collector shall be guided by the provisions contained in Sections 23 and 24 and other relevant provisions of the Land Acquisition Act, 1894 (Central Act I of 1894), subject to modification that in the said Sections 23 and 24, the references to the date of publication of the notification under sub-section (1) of Section 4 and the date of publication of the declaration under Section 6 of the said Act shall



WEB COPY

be construed as references to the date of publication of notice under sub-sections (2) and (1), respectively of Section 15 of this Act.

(7) For the purpose of determining the amount-

(a) the Collector shall have power to require any person to deliver to him such returns and assessments as he considers necessary;

(b) the Collector shall also have power to require any person known or believed to be interested in the land to deliver to him a statement containing as far as may be practicable, the name of every other person interested in the land as co-owner, mortgagee, tenant or otherwise, and the nature of such interest, and of the rents and profits, if any, received or receivable on account thereof for three years next preceding the date of the statement.

(8) Every person required to deliver a return, assessment or statement under sub-section (7) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code.

(9) The Collector may hear expert witnesses if it be necessary to do so in any particular case.

(10) The Collector or any officer authorised by him in this behalf shall be entitled to enter in and inspect any land which is subject to proceedings before him.

(11) The Collector shall dispose of every case referred to him under sub-section (3) for determination of amount as expeditiously as possible and in any case within six months from the date of such reference.

(12) Where any case is referred to any Collector under sub-section (3), the Government may, at any stage by order, in writing and for reasons to be recorded therein, transfer it to any other officer, and upon such transfer, unless some special directions are given in the order, the officer to whom the case is transferred, may hear and dispose of the case from the stage at which it was



transferred or the case may be heard and disposed of by him denovo."

12. Section 19 of the Act of 2001 pertains to determination of compensation for acquisition of the land. A detailed process has been given for that purpose and the exercise given therein is to be taken only after completion of the process for acquisition of land given under Section 15 of the Act of 2001. Section 15 of the Act of 2001 is also quoted hereunder for ready reference:

"15. Power to acquire land.- (1) If the Government are satisfied that any land is required for the purpose of acquire land. any highway or for construction of bridges, culverts, causeways or other structures thereon or for any purpose incidental or ancillary thereto, in furtherance of the objects of this Act, they may acquire such land by publishing in the Tamil Nadu Government Gazette a notice specifying the description of such land and the particular purpose for which such land is required.

(2) Before publishing a notice under sub-section (1), the Government shall call upon the owner and any other person having interest in such land to show cause within such time as may be specified in the notice, why the land should not be acquired. The Government shall also cause a public notice to be given in such manner as may be prescribed.

(3) The Government may, after considering the cause, if any, shown by the owner or other person having interest on such land, pass such an order under sub-section (1), as they may deem fit."

13. The documents on record show that before publication of the notice under Section 15(1) of the Act of 2001, a notice under Section 15(2) of the Act of 2001 was issued by the respondents and pursuant to which, even the appellants have responded and submitted their objections. After considering the objections, notice under Section 15(1) of the Act of 2001 was issued by the respondents finding that the land is required for the purpose of highways. Section 15(1) of the Act can be invoked not only for the highways, but even for the acquisition of land for construction of bridges, culverts, causeways or other structures thereon or for any purpose incidental or ancillary thereto, in furtherance of the objects of the Act.

14. After issuance of the notice under Section 15(1) of the Act of 2001, no challenge to it was made by the appellants and



it was so published in the year 2018. In view of the above, the process required for acquisition of the land was completed by the respondents and, therefore, there are documents to show that the acquisition is by undertaking the exercise given under Section 19 of the Act of 2001. Accordingly, notice under Sections 19(5) and 19(7) of the Act of 2001 was issued and no objection in that regard determining the compensation was raised other than to give a brief history of the litigation. The challenge to the notice was not even on the ground that prior to it, the exercise given under Section 8 of the Act of 2001 was not undertaken. In any case, the learned Single Judge did not find any illegality in the notice issued under Sections 19(5) and 19(7) of the Act of 2001 and, accordingly, dismissed the writ petitions. We do not find any error in the judgment and order of the learned Single Judge, because notice under challenge was for determination of compensation after a notification under Section 15 of the Act of 2001.

15. The issue raised before this Court for the first time is in reference to Section 8 of the Act of 2001. Section 8 of the Act of 2001 is quoted hereunder:

"8. Power to fix highway boundary, building line, control line, etc. (1) 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 -

(a) the highway boundary, building line, or control line; or

(b) the highway boundary and the building line; and

(c) the building line and the control line:

Provided that before the publication of the notification under this sub-section, a draft of the said notification shall be published inviting objections, if any, on the proposed fixation.

(2) The draft of the notification under sub-section (1) shall contain -

(a) all details of lands situated between the highway boundary line and control line proposed to be fixed and in the case of new works, the lands and persons benefited by the construction or development of such highway, and;

(b) notice requiring all persons likely to be affected by such notification, to make their objections or suggestions, if any, in



meaning thereby it was only notified with boundary. The aforesaid otherwise remains factual issue and was not taken up by the appellants. In any case, to deal with the said argument, we are required to refer Section 15(1) of the Act of 2001, which is not only a provision for acquisition of the land for highways, but for construction of bridges, culverts, causeways and other structures. The provision aforesaid does not provide that exercise therein can be undertaken only after completion of the exercise given under Section 8 of the Act of 2001.

19. This Court has power to alter the provision enacted by the legislature, though it has power to declare a provision as ultra vires on its challenge, if it is found to be unconstitutional or suffers from any illegality. In the case on hand, when the highway is already existing, as is coming out from the photographs, then the process for acquisition of a part of the land which is obstructing the existing highway given under Section 8 of the Act was not required to be undertaken for giving effect to the acquisition, by undertaking the process given under Section 15(1) or Section 15(2) of the Act of 2001. Therefore, the judgment of the Apex court in the case of Sannarangappa (supra) would be of no help to the appellants even if the issue aforesaid can be allowed to be taken at the stage of appeal.

20. We further find that the issue before the Apex Court was on a judgment of the Karnataka High Court where a challenge was made to Section 15 of the Karnataka Highways Act, 1964. The writ petition therein was dismissed by the Karnataka High Court, thus, an appeal was preferred. The issue before the High Court was not in reference to non-compliance of the provision of the Act of 1964 before acquisition of the land. The discussion of the argument was made in regard to the challenge to Section 15 of the Act of 1964 and therein certain observations were made. But the Apex Court dismissed the appeal and even no interference in the acquisition was made. The aforesaid would become clear from paragraph (8) of the judgment in the case of Sannarangappa (supra). The process for acquisition was completed therein followed by determination of compensation, as referred by the Apex Court in the said judgment.

21. In view of the above, we do not find any force in the argument raised by learned counsel for the appellants in reference to Section 8 of the Act of 2001 and now the position is that after issuance of notice under Sections 19(5) and 19(7) of the Act of 2001 to determine the compensation, an award has already been passed on 31.03.2021. A challenge to the award does not exist and otherwise we have dealt with all the issues raised before us and finding no merit therein, the appeals fail not only qua the challenge to the judgment and order of the



learned Single Judge, but also in reference to the arguments raised for the first time before us and, accordingly, the batch of appeals are dismissed.

22. There will be no order as to costs. Consequently, C.M.P.Nos.9056, 8727, 8728, 9040 and 9050 of 2022 are closed.

23. The photograph of the existing road has been submitted by learned Government Pleader and, for clarity, the same is annexed along with this judgment.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

bbr

To:

1. The District Collector,
Chengalpattu District,
Chengalpattu-603 001.
2. The Special District Revenue Office,
Land Acquisition,
Highways, Metropolitan Wing,
Alandur, Chennai-600 016.
3. The Assistant Divisional Engineer (Highways),
Construction and Maintenance,
Tambaram, Chennai - 600 042.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.35177
+1cc to the Government Pleader, S.R.No.35555

W.A.Nos.1410, 1363, 1364, 1412 and 1414 of 2022

BP[co]
NSK/28/06/2022