



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
25.04.2022	06.06.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.30969 OF 2013 & 11953 TO 11955 OF 2014

AND

M.P.NOS.2 OF 2014 (3 NOS.)

E.Suganthi

.. Petitioner in WP 30969/2013

N.C.Chellathambi

.. Petitioner in WP 11953/2014

Athikesavan

.. Petitioner in WP 11954/2014

G.Kumar

.. Petitioner in WP 11955/2014

- Vs -

1. The Union of India

Rep. by its Secretary

To Government, Govt. of India

Ministry of Road Transport & Highways

New Delhi.

2. The National Highways Authority of India

G 5-6, Sector 10, Dwarka

New Delhi 110 075

Rep. by its Chairman.

3. The Special District Revenue Officer (LA)

National Highways

Kahcieepuram & Thiruvellalore District

2nd Floor, Taluk Office

Poonamallee, Chennai 600 056.

4. The Project Director

National Highways Authority of India

No.1/54-28, Butt Road

Near Kathipara Junction

St. Thomas Mount, Chennai 600 016.

.. Respondents in all WPs



W.P.No.30969 of 2013 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records relating to the proceedings pursuant to the Notification dated 30.09.2013 of the 1st respondent published in Government of India Gazette No.2274 SO 2952 (E) and the Notification dated 29.10.2013 under Section 3 (g) (3) & (4) of the National Highways Act, 1956 and quash the same insofar as it relates to the land of the petitioner measuring an extent of 57 sq. mtrs., in Survey No.67/2B1 and 125 sq.mtrs., in Survey No.67/1C1 of Thandalkazhani Village, Tiruvellore District.

W.P.No.11953 of 2014 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records relating to the proceedings pursuant to the Notification dated 30.09.2013 of the 1st respondent published in Government of India Gazette No.2274 SO 2952 (E) and the Notification dated 29.10.2013 under Section 3 (g) (3) & (4) of the National Highways Act, 1956 and quash the same insofar as it relates to the land of the petitioner measuring an extent of 34, 20 and 33 sq.mtrs. in Survey No.115/4A1B1, 115/4A2A and 115/4A1C1 of Padianallur Village, Tiruvellore District.

W.P.No.11954 of 2014 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records relating to the proceedings pursuant to the Notification dated 30.09.2013 of the 1st respondent published in Government of India Gazette No.2274 SO 2952 (E) and the Notification dated 29.10.2013 under Section 3 (g) (3) & (4) of the National Highways Act, 1956 and quash the same insofar as it relates to the land of the petitioner measuring an extent of 290 sq. mtrs. in Survey No.184/1A of Padianallur Village, Tiruvellore District.

W.P.No.11955 of 2014 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records relating to the proceedings pursuant to the Notification dated 30.09.2013 of the 1st respondent published in Government of India Gazette No.2274 SO 2952 (E) and the Notification dated 29.10.2013 under Section 3 (g) (3) & (4) of the National Highways Act, 1956 and quash the same insofar as it relates to the land of the petitioner measuring an extent of 43 sq. mtrs. in Survey No.121/6 at Padianallur Village, Tiruvellore District.



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For Petitioners: Mr.AR.L.Sundaresan, SC, for
Ms.AL.Gandhimathi in WP 30969/13
Mr.M.Saravanakumar in
WP Nos.11953 to 11955/14

For Respondents: Mr.N.Ramesh, Spl. GP for RR-1 & 2
Mr.Richardson Wilson, for
M/s.Wilson Associates for RR-3 & 4

COMMON ORDER

The present writ petitions have been filed assailing the acquisition of the lands made by the respondents/National Highways Authority for the construction of six way lane as bad and the consequential notification issued u/s 3 (D) (1) and Section 3 (G) (3) and (4) are perverse.

2. It is the case of the petitioners that they are the owners of the lands and have been carrying on their export business activity in the said lands, thereby attracting a large volume of foreign exchange. It is the further case of the petitioners that for the purpose of laying down NH-5 Road of the Chennai - TADA Section, lands were sought to be acquired by issuance of Notification in the year 2000 u/s 3 (A) 3 of the National Highways Act (for short 'the Act') to which the petitioners submitted their objections and after affording an opportunity of hearing, the objections were overruled and portion of the lands of the petitioners were acquired. However, even at that time, the respondents had stated that there would be no further acquisition of the balance lands of the petitioner.

3. It is the further case of the petitioners that much to their shock and surprise, by issuance of Notification on 17.12.2009 u/s 3 (A) 3 of the Act, further extent of about 912 sq. mtrs., along with building was sought to be acquired for the purpose of expansion of the National Highway and objections were called for to which the petitioners submitted their objections. However, the said objections were mechanically overruled by the respondents, which prompted the filing of W.P. No.13413 of 2010 in which this Court had granted an order of interim stay of dispossession. However, this Court was informed about the letter dated 14.6.2012 of the 4th respondent about the lapsing of the land acquisition proceedings, which was recorded by this Court in its order dated 7.12.12 in W.P. No.13413/10 while disposing of the writ petition. However, considering the fact that fresh notification had been issued by the respondents on



4. It is the further case of the petitioners that after allowing the notification of the year 2009 to lapse, a fresh notification was issued by the 3rd respondent on 30.10.2012 for acquisition of the very same lands by publishing notice u/s 3 (A) 1 of the Act and calling for objections if any to which the petitioners submitted their objections to the 3rd respondent on 3.1.2013 pointing out that the acquisition was not for public purpose but only to benefit a private entity. The petitioner has also raised the objection to the fact that the expansion, which is sought to be made is abutting the Puzhal lake and expansion, as proposed would be detrimental not only to the water body, but also would put at risk the lives of very many people using the National Highway as the road would cave in due to the nature of soil in and around the banks of the river causing serious catastrophe, more especially during torrential rains.

5. It is the further case of the petitioners that not only the lands under acquisition are abutting the banks of the river, which renders the acquisition bad, but the objections of the petitioner have been rejected mechanically by the 4th respondent. It is the further case of the petitioners that the four way lane, being converted to a six way lane, is only for the purpose of benefitting a private player, which is evident from the contract entered into in which the private party will be taking 83% of the toll charges and the Government would be given 17% of the charges for a period of 15 years. Since the contract has already been entered into, the objections have been mechanically overruled, which shows non-application of mind on the part of the acquisition and requisitioning body. It is the further case of the petitioners that though it is stated in the order overruling the objections that it is only based on the opinion of the experts after inspection, however, there is no independent application of mind in the order of rejection, but a mere reproduction of the reasoning given by the 4th respondent. The above act of the respondents in not considering the objections in proper perspective renders the acquisition bad which has resulted in the filing of the present writ petitions.

6. Learned senior counsel appearing for the petitioner in W.P. No.30969/13 submitted that the lands, which are sought to be acquired are abutting the river and any road, more particularly a National Highway, constructed on such lands, where the flow of heavy vehicles would be more, would be detrimental not only to the said vehicles using the road, but it would also be hazardous to the people residing in the nearby



areas, as the caving of the road, cannot be ruled out. It is the further submission of the learned senior counsel that though objections were called for, which act has a specific object to achieve, but the same has been rendered a mere empty formality by the act of the respondents in taking the opinion of the experts with regard to formation of the road and also entering into contract with a private stakeholder, which shows that the respondents have foreclosed the issue and the provisions contemplated under the Highways Act, more especially Sections 3 (C) 2 and Section 3 (D) have been rendered an empty formality.

7. It is the further submission of the learned senior counsel that the lands, which have been acquired have not been put to use till date and the scheme has not gone into implementation even after a passage of seven years, which clearly shows that the respondents are not inclined to proceed with the implementation of the project for reasons best known to them. It is therefore the submission of the learned senior counsel that in view of the non-utilisation of land, for which it was acquired, even a lapse of seven years, the said lands should be resumed back to the land owners, as the said lands cannot be put to use for any other purpose than the one for which it was acquired. Therefore, learned senior counsel prays that the 4th respondent may be directed to resume the lands back to the land owners upon payment of the amount received towards compensation.

8. Learned counsel appearing for the petitioners in W.P. Nos.11953 to 11955 of 2014, in essence, adopted the submissions made by the learned senior counsel and prayed for resumption of lands in favour of the petitioners.

9. In support of the submission relating to the effectiveness of the enquiry, which should not be a mere formality, learned senior counsel for the petitioner relied on the decision in Hindustan Petroleum Corporation Ltd. - Vs - Darius Shapur Chenai & Ors. (2005 (7) SCC 627) to stress that there must be proper application of mind to the relevant factors while considering the objections.

10. Per contra, learned Special Government Pleader appearing for respondents 1 and 2 submitted that it is the policy decision of the Government to convert the four way lane into a six way lane in the interest of the growth of the State and that being the case, this Court may not interfere with the acquisition process, which has been completed in according with the provisions of the National Highways Act.



11. Learned counsel appearing for respondents 3 and 4 submitted that the four way lane was already undertaken under the Golden Quadrilateral Project in the year 2000 and cost being a determinative factor then, minimal lands were acquired for the purpose of four way lane. However, due to explosion of vehicular traffic due to the ease of movement in the National Highway, the Government thought it fit to go in for six way lane and considering all the implications, lands, which were barely necessary for the purpose of constructing the six way lane alone was sought to be acquired.

12. It is the further submission of the learned counsel for respondents 3 and 4 that the apprehension of the petitioners that the lands, which are sought to be acquired, abuts the Puzhal lake and, therefore, any construction of six way lane on the said lands would be detrimental to the flow of traffic, as the heavy vehicles plying on the National Highway would cause damage to the river tank bunds, has been gone into in detail in the expert study by conducting detailed project report and only after approval from the appropriate authority the said project is being undertaken. It is the further submission of the learned counsel that already four way lane is in existence and the scope of the project is only to widen the existing four lanes to six lanes. Irrespective of the road being constructed as six way lane, already four way lane is in existence on which heavy vehicles are plying, which has, till date, not caused any damage to the roads or the banks or the river and there has not been any complaint about the same nor is there any complaint about the tyre wear and fuel loss as stated by the petitioners.

13. It is the further submission of the learned counsel that NH-5 is 50 metres from the Puzhal Lake Reservoir Banks and it will not cause any threat to the banks and the roads are designed with Vehicular Under Passes and Pedestrian Under Passes at regular intervals and there would be no difficulty for the free flow of traffic on the National Highway. It is the further submission of the learned counsel that the objections raised by the petitioners have been gone into in detail by the 4th respondent and the objections were negative considering the merits of the objection.

14. It is the further submission of the learned counsel that it is the policy decision of the Government to convert all the four way lanes into six way lanes for the purpose of easy movement of vehicular traffic and also for the purpose of reducing the inconvenience caused to the commuters on the National Highway. The whole project has been carefully studied in detail by the experts and, thereafter, acquisition of the lands have been approved and, therefore, this Court may not



interfere with the opinion of the experts with regard to construction of the six way lane, as it has been the consistent view of the Courts that opinion of experts should not be deliberated by the Courts unless it is shown that the said opinion of the experts suffers from perversity. In the case on hand, the petitioners merely allege that the expert opinion has been obtained much before calling for objections, but it is the submission of the learned counsel that a detailed project study, including the opinion of the experts was taken before finalizing the viability of the project.

15. It is the further submission of the learned counsel that merely because the lands have not been utilized for the purpose for which it has been acquired, it cannot be said to have lost its value so as to be resumed in favour of the petitioners. It is the submission of the learned counsel that the lands have been acquired, keeping in mind the necessity for making the six way lane, which will be implemented and the lands will be put to use only for the purpose for which it has been acquired and only with a view to have a lower cost of acquisition as any acquisition at a later date would entail more cost, which would be a burden on the exchequer and, therefore, the acquisition has been done. Therefore, there is no scope for resumption of lands in favour of the petitioners. It is the further submission of the learned counsel that there is no provision under the Act providing for resuming the lands in favour of the land owners and, therefore, the claim of the petitioners for resumption does not stand the test of judicial scrutiny. Therefore, it is prayed that the present petitions are devoid of merits and the same deserves to be dismissed.

16. In support of his submissions, learned counsel for respondents 3 and 4 placed reliance on the following decisions :-

- i) Union of India - Vs - Kushala Shetty & Ors. (2011 (12) SCC 69); and
- ii) Competent Authority - Vs - Barangore Jute Factory & Ors. (2005 (13) SCC 477).

17. 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 as also the decisions relied on by the respondents.

18. Though contentions have been raised with regard to the acquisition proceedings, by contending that the respondents allowing the earlier proceedings to lapse, have once again taken steps to renotify the acquisition and have in fact gone ahead with the acquisition of lands, which is per se unsustainable, however, a perusal of the materials available on record clearly

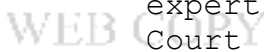


reveal that the procedure for acquisition contemplated under the National Highways Act have been followed and there is no defection from any of the provision. Such being the case, the fact that the earlier proceedings have lapsed would not be a bar for the respondents to start the acquisition afresh by issuing a fresh notification, which has been done in this case and the act of the respondents in going for a fresh acquisition cannot be held to be impermissible.

19. Three-fold contentions have been raised by the petitioners in assailing the acquisition proceedings, viz., i) that the lands acquired are abutting the tank bund and would be unsafe for laying National Highways where movement of heavy vehicles would be there; ii) that before even notifying the lands, contract has been entered into and the lands, which are sought to be acquired have been identified and fixed for acquisition, thereby, the enquiry conducted is merely a farce and an eye wash; and iii) that the lands are yet to be put to use and, in view of the passage of time the lands having not been used, the respondents should resume the lands back to the original land owners.

20. Insofar as the contention relating to the lands acquired abutting the tank bund and the risk it poses to the heavy vehicular traffic movement is concerned, though the petitioner contends that the said acquisition and laying of the roads would be hazardous to the movement of traffic as the movement of the heavy vehicle would render the roads laid to cave in, thereby causing damage to the tank bund and in turn it will result in hindering the movement of the traffic, the submission, though at first sight looks attractive, however, considering all the attendant circumstances and other factors, does not weigh too high in the mind of this Court.

21. It is to be pointed out that it is not the case of the petitioners that no expert study has been undertaken before deciding the alignment of the roads and the expansion of roads in consideration with the tank bund abutting the lands which are sought to be acquired. It is evident from the counter of the respondents that a detailed expert study has been undertaken before finalizing the alignment and laying of the road. All the factors, including the lands abutting the tank bund have been taken into consideration before finalizing the formation of the roads. It is the further stand of the respondents that already four way lane is in existence and the present acquisition is only for the purpose of expansion of the road and no new road formation is proposed. Further, it is also evident from the counter that the tank bund is more than 50 mtrs., away from the proposed project and it would in no way be a factor in the



22. It has been the consistent view of the Courts that when experts have opined about the viability of the project, this Court cannot substitute its views to that of the Technical Experts unless the opinion arrived at by the expert body is perverse and is blatantly wrong, which warrants interference at the hands of this Court.

"28. Here, it will be apposite to mention that NHA 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. NHA 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."

<https://hcservices.ecourts.gov.in/hcservices/>



knowledge that the abutting nature of the petitioners land would not be conducive for the expansion of the project. Neither the courts nor the individuals, viz., the writ petitioners are body competent to decide whether the lands would be conducive to the expansion of the project. When the expert body has conducted detailed analysis and submitted that there would be no impediment for expansion of the road project and there would be no detrimental to the tank bund and the heavy vehicles that would be plying on the said roads would not suffer in any way, either through wear or tear or the quality of the roads, the apprehension of the petitioners does not merit acceptance.

25. The petitioners base their contention on the ineffectiveness of the enquiry conducted by the respondents and claim that they have been robbed of a right due to the tendency of the respondents in mechanically rejecting their objections without proper consideration. In support of their contention, the decision in Hindustan Petroleum case (supra) has been pressed into service.

26. A perusal of the said decision in Hindustan Petroleum case (supra) reveals that the acquisition is under the Land Acquisition Act and in that context the Hon'ble Supreme Court has held that the effectiveness of the enquiry u/s 5-A of the Land Acquisition Act is mandatory and it has been held that Section 5-A of the Act confers a valuable important right and having regard to the provisions contained in Article 300-A of the Constitution.

27. However, in the case on hand, the acquisition has been made under the National Highways Act and not under the Land Acquisition Act. The enquiry is governed u/s 3-C (1) of the National Highways Act. The Hon'ble Supreme Court in Barangore Jute Factory case (supra), while analyzing the distinction between the enquiry contemplated u/s 5-A of the Land Acquisition Act vis-à-vis Section 3-C (1) of the National Highways Act, held as under :-

"8. The absence of plan also renders the right to file objections under Section 3C (1) nugatory. In the absence of a Plan, it is impossible to ascertain or know which part of acquired land was to be used and in what manner. Without this knowledge no objections regarding use of land could be filed. Since the objection regarding use of the land had been given up by the writ petitioners, we need not go any further in this aspect. We would, however, like to add that unlike Section 5A of the Land Acquisition Act, 1894 which confers a general right to object to acquisition



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of land under Section 4 of the said Act, Section 3C (1) of the National Highways Act gives a very limited right to object. The objection can be only to the use of the land under acquisition for purposes other than those under sub-section 3A (1). The Act confers no right to object to acquisition as such. This answers the argument advanced by the learned counsel for the NHAI that failure to file objections disentitles Writ Petitioners to object to the acquisition. The Act confers no general right to object, therefore, failure to object becomes irrelevant. The learned counsel relied on the judgment of this court in Delhi Administration Vs. Gurdip Singh Uban & Ors. (1999 (7) SCC 44). In our view, this judgment has no application in the facts of the present case where right to object is a very limited right. The case cited is a case under the Land Acquisition Act, 1894 which confers a general right to object to acquisition of land under Section 5A. Failure to exercise that right could be said to be acquiescence. The National Highways Act confers no such right. Under this Act there is no right to object to acquisition of land except on the question of its user. Therefore, the present objection has to be decided independently of the right to file objections. De hors the right to file objection, the validity of the Notification has to be considered. Failure to file objection to the notification under Section 3C, therefore, cannot non-suit the Writ Petitioners in this case."

(Emphasis Supplied)

28. From the aforesaid decision, it is manifestly clear that Section 3C (1) of the National Highways Act gives a very limited right to the owner to object and that the objection can only to the use of the land under acquisition for purposes other than those under Section 3A (1) and the Act confers no right to object to acquisition as such.

29. In the case on hand, it is not the case of the petitioners that the lands, which have been acquired for the purpose of expansion of road are sought to be used for other purposes, which is prohibited under the National Highways Act and, therefore, their objections gains significance and it has to be considered properly, else their valuable right provided under Article 300-A of the Constitution would stand negated. It is the case of the petitioners that though the acquisition has been made as early as in the year 2013, till date the project has not yet seen the light of the day, having not taken and, therefore, the acquisition is bad.



30. It is to be pointed out that merely because the lands, which have been acquired, have not been put to its use till date cannot be inferred that the said lands have been earmarked for being used for some other purpose. There is no material to substantiate such an inference and mere allegation of its non-usage till date cannot be put against the acquisition to hold that the acquisition is bad. Except on the question of usage, the owner has no right to object and as pointed above, there are no materials for inferring a different usage for the lands.

31. Further, a careful perusal of the records reveal that there is clear compliance of Section 3-C (1) and 3-D (1) of the National Highways Act and as pointed out above, the other provisions of the Act have also been complied with. In such view of the matter, this Court is of the considered view that the decision in Barangore Jute Factory case (supra) stands squarely applicable to the present case and in such view of the matter, the contention pales into insignificance and deserves to be negative.

32. Insofar as the contention of the petitioners that the contract has been entrusted to a private entity prior to the acquisition proceedings, which clearly shows that the compliance with the provisions under the Highways Act is a farce and an eye-wash, however, it is to be pointed out that it is not only the policy decision of the Government and such decisions cannot be interfered with lightly by this Court. Further, entering into a contract for enforcing a policy for the public good parallel to the proceedings for acquisition cannot be said to be an act, which is not in consonance with the Act. Once a decision is taken by the Government to implement some project for the public good, things normally move parallel to the finalisation and starting of the project and merely because the Government had entered into a contract with a private entity for moving forward with the project cannot be said to be bad or illegal, more so, when the said contract has been awarded after following all the procedures contemplated under the statutes, which govern such contracts. Therefore, the contention of the petitioners that the parallel process of entering into the contract vitiates the entire acquisition proceedings does not merit acceptance.

33. The last of the contention of the petitioners relates to the resumption of the lands in favour of the petitioners as even after a passage of almost seven years, the lands have not been put to use and, therefore, the petitioners are entitled for reclaiming the said lands.



34. Though such a contention for resumption of lands have been put forth before this Court by the petitioners, yet under what provision of the National Highways Act such resumption is sought for has not been spelt out. A careful perusal of the entire National Highways Act reveals that no provision has been made for resumption of lands back to the original owners, if it has not been put to the use for which it has been acquired. Further, as discussed above, the lands have been acquired for the purpose of expansion of the road into a six way lane. May be, as on date, the project has not yet kick-started, but it is the submission on behalf of the respondents that the said lands would be used at a later point of time for the expansion of the four way lane into a six way lane. In a nutshell, the lands would be put to use for the purpose for which it was acquired. Such being the case, there being no provision in and by which the petitioners could seek reconveyance of the lands in their favour and that the respondents are also inclined to use the lands for the purpose for which it was acquired at a later point of time, this Court is of the considered view that the relief sought for by the petitioners for reclaiming their lands does not merit acceptance and the said contention also fails and deserves to be dismissed.

35. For the reasons aforesaid, the contentions raised by the petitioners does not merit acceptance and deserves to be rejected. Accordingly, the writ petitions fail and the same are dismissed. Connected M.P.s are closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Secretary
Ministry of Road Transport & Highways
Government of India
New Delhi.
2. The Chairman
National Highways Authority of India
G 5-6, Sector 10, Dwarka
New Delhi 110 075.



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3. The Special District Revenue Officer (LA)
National Highways
Kahcieepuram & Thiruvellore District.
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Poonamallee, Chennai 600 056.

4. The Project Director
National Highways Authority of India
No.1/54-28, Butt Road
Near Kathipara Junction
St. Thomas Mount
Chennai 600 016.

+1cc to M/s.AL.Gandhimathi, Advocate, S.R.No.32301

+1cc to M/s.Wilson Associates, Advocate, S.R.No.32597

W.P.NO.30969 OF 2013
W.P.NOS.11953 To 11955 OF 2014

MT (CO)
RLP (04/07/2022)