



W.P. Nos.9000-14255/2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
29.06.2022	12.07.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS.9000 & 14255 OF 2013

W.P. No. 9000 of 2013

1. S.Mahaveerchand Jamad (Decd.)
2. Indira @ Maangivocer
3. M.Mahendrakumar
4. M.Mahipal
5. M.Gajendrakumar
6. Mrs. B.Shanthi
7. M.Vinoth

.. Petitioners

(P-2 to P-7 substituted as LRs
Of deceased P-1 vide order
Dated 8.6.2022 in MP No.3/2015)

- Vs -

1. The Secretary to Government
Highways & Minor Ports Dept.
Fort St. George, Chennai 600 009.

2. The District Collector
Kancheepuram District
Kancheepuram.



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3. The Special Tahsildar (Land Acqn.)
Inner Ring Road Scheme
No.3, GST Road, Chrompet
Chennai 600 044.
4. The Chief Engineer
State Highways Department
Panagal Buildings II Floor
Saidapet, Chennai – 15.
5. The Divisional Engineer (Highways)
Projects Division I
13/28, Natham Mettu Street
Chengalpattu.
6. The Assistant Engineer (Highways)
Projects Division – I
13/28, Natham Mettu Street
Chengalpattu.
7. The Chief Divisional Retail Sales Manager
Indian Oil Corporation Ltd.
Chennai Divisional Officer
No.500, Anna Salai, Teynampet
Chennai 600 018.
8. J.Navarathanmal Jamad
9. Pushpa Bai Bafna
10. J.Narendra Kumar Jamad
11. Smt. Pramila Sancheti
12. Smt. Urmila Kumbhat
- Respondents
13. (RR-7 to R-12 impleaded vide
Order dated 8.6.22 in MP 2/15)

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W.P. No.14255 of 2013

J.Navarathanmal Jamad

.. Petitioner

- Vs -

1. The District Collector
Kancheepuram District
Kancheepuram.
2. The Special Tahsildar (Land Acqn.)
Inner Ring Road Scheme
No.3, GST Road, Chrompet
Chennai 600 044.
3. S.Mahaveerchand Jamad (Decd.)
4. Pushpa Bai Bafna
5. Narendra Kumar Jamad
6. Indira @ Maangivocer
7. M.Mahendrakumar
8. M.Mahipal
9. M.Gajendrakumar
10. Mrs. B.Shanthi
11. M.Vinoth
(RR-4 & 5 impleaded vide
Order dated 17.2.15 in MP 2/13)
(RR-6 to 11 substituted as LR's of
Deceased R-3 vide order dated
8.6.22 in M.P. No.1/15)

.. Respondents

W.P. No.9000 of 2013 filed under Article 226 of the Constitution of India
praying this Court to issue a writ of certiorari calling for the records pertaining to



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the notice issued by the 2nd respondent u/s 15 (2) of the Tamil Nadu Highways Act, 2001 in Na. Ka. No.14177/2008F3 dated 14.09.2009 and the Gazette Notification made in G.O. Ms. No.109, Highways & Minor Ports (HW2), dated 23rd March, 2010, published in the Tamil Nadu Government Gazette in Part II Section 2 dated 23.3.2010 in respect of petitioner's land in TS No.556/14 sub-divided as 556/14B measuring 0.560 sq.mtrs., in Melmaiyanur Village, Chengalpattu Town, Chengalpattu Taluk, Kancheepuram District and quash the entire acquisition proceedings.

W.P. No.14255 of 2013 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records pertaining to Na.Ka. No.66/2008/A1 dated 6.5.2013 passed by the 2nd respondent and quash the same.

For Petitioners : Mr. M.S.Subramanian in WP 9000/13
Mr. K.Mohanamurali in WP 14255/13

For Respondents : Mr. Yogesh Kannadasan, Spl. GP
For RR-1 & 2 in WP 14255/13 &
For RR-1 to 6 in WP 9000/13
Mr. M.S.Subramanian for RR-3 & 6 to 11
In WP 14255/13

COMMON ORDER



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Two writ petitions, one, viz., W.P. No.9000/13, assailing the acquisition on the ground of non-compliance of the provisions of the Tamil Nadu Highways Act, 2001 and the other writ petition, viz., W.P. No.14255/13, questioning the authority of the official respondents in issuing notice with regard to the compensation received by the petitioner and directing deposit of the said compensation, which was settled in lieu of award passed pursuant to the land acquisition proceedings, have been filed and since both the petitions are interconnected, they were heard together and disposed of by this common order.

Brief facts as given in W.P. No.9000/2013 :

2. It is the case of the petitioner that the lands in T.S. No.556/14 (Part) to an extent of 0.560 sq.mtrs., formed part of a larger extent and that the said property was purchased as family property in the name of the petitioner's brother, viz., Jawarilal Jamad, the father of the petitioner in W.P. No.14255/13 and the revenue records, including the patta stood in the name of the petitioner's brother. It is the further case of the petitioner that in the oral family partition, which had taken place in the year 1974, the subject property along with land, building with the retail outlet of Petrol Bunk was allotted to the share of the



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petitioner and the remaining 60 cents situated on the western side of the petrol bunk was given to the brother of the petitioner.

3. It is the further case of the petitioner that for the purpose of construction of railway over bridge over the existing railway line, the subject land was proposed to be acquired under the Tamil Nadu Highways Act, 2001 (for short 'the Act') and the notice u/s 15 (2) was served in the name of Jawarilal Jamad and delivered at the premises of the petrol bunk. It is the further case of the petitioner that the petrol bunk, which stood in the name of his father, viz., Santhock Chand Jamad, stood devolved on the petitioner in the family partition and that he has been continuing the operations of the petrol bunk.

4. It is the further case of the petitioner that since the land stood in the name of his brother, notice u/s 15 (2) of the Act was issued on the said Jawarilal Jamad on 14.9.2009, inspite of the fact that the said Jawarilal Jamad had passed away even as early as on 23.5.02. By the said notice, enquiry was fixed on 9.11.09 and the notice, which was received at the premises of the Petrol Bunk, was attended upon by the petitioner submitting his detailed objections, as



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interested person and occupier of the subject property, requesting to give an opportunity to put forth his objections along with documentary evidence. In spite of the said communication, no further notice was issued to the petitioner u/s 15 (2) of the Act, which is a mandatory requirement and in spite of receipt of objections and forwarding of the same to the requisitioning body, no opportunity was granted to the petitioner.

5. It is the further case of the petitioner that the notification was issued without application of mind and gazette in the name of a deceased person, in spite of the materials and objections submitted by the petitioner to show that he is a person interested in the property and running the retail petrol outlet. It is the further case of the petitioner that award has been passed in Award No.6 of 2010 on 31.8.2010 in the name of the deceased Jawarilal Jamad and directing him to receive the compensation amount and a notice of award was also issued. It is the further case of the petitioner that he sent further objections on 28.5.2010 stating that his objections should be heard and not that of the heirs of Jawarilal Jamad and that they are not entitled to receive the compensation.



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6. It is the further case of the petitioner that the notification or the notice u/s 15 (2) has not specified the purpose of acquisition sought to be made. It is the further case of the petitioner that except for his lands, no other lands are sought to be acquired and though the petitioner submitted his objections and his son, viz., the third petitioner attended the enquiry on 9.11.09, their objections were not considered but straightaway gazette publication was made without passing an order u/s 15 (3) r/w/ Rule 5 (4) of the Tamil Nadu Highways Rules, 2003. It is the further averment of the petitioner that the petitioner being an interested person, after holding enquiry, following the procedure contemplated u/r 5 is mandatory and non-compliance of the same vitiates the acquisition, which deserves to be set aside.

7. Non-following of the mandatory procedures and gross violations in non-consideration of the objections of the interested persons coupled with the fact that the entire land acquisition proceedings have been taken through in the name of the deceased person, the aforesaid violations vitiate the entire acquisition proceedings and, therefore, the same deserves to be set aside.



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Brief facts in W.P. No.14255 of 2013 :

8. It is the case of the petitioner that his father, viz., Jawarilal Jamad purchased the property to a total extent of 80 cents in the year 1963 by way of registered sale deed and all the revenue records since stand mutated in the name of the petitioner's father. Subsequently, his father sold an extent of 53 cents holding 27 cents. It is the further averment of the petitioner that subsequent to the demise of his father, the petitioner, his brother, his sisters and mother inherited the estate and subsequent to the passing away of the petitioner's mother, the properties stood inherited by the petitioner and his sisters.

9. It is the further averment of the petitioner that the subject land was sought to be acquired for the purpose of formation of road over bridge between Chengalpattu and Tirumani Railway Stations to an extent of 14 cents in S. No.556/14B and in the balance 13 cents is being utilized for the purpose of running the petrol outlet. The petitioner's sisters had, vide release deed, released the share in the subject property in favour of the petitioner.



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10. It is the further averment of the petitioner that pursuant to the acquisition proceedings award in No.06/2010 came to be passed on 31.8.2010, but the amount was not paid to the petitioner, which resulted in filing of W.P. No.3990/10 and this Court, vide order dated 23.2.2011, directed the official respondents to dispose of the representation, which resulted in the award amount of Rs.71,12,530/- being paid while deducting an amount of Rs.7,11,753/-. Accordingly, net compensation amount of Rs.64,05,777/- was paid by the 2nd respondent to the petitioner, pertaining to 3/5th share of the petitioner and his two sisters.

11. It is the further averment of the petitioner that out of the blue, the petitioner received the impugned communication from the 2nd respondent calling upon him to deposit the compensation received failing which criminal proceedings would be initiated and enquiry was fixed on 9.5.13. It is the further averment of the petitioner that the proceedings in W.P. No.9000/13 and the order of stay granted therein were pointed out in the notice. It is further averred that the petitioner participated in the enquiry proceedings and submitted that



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the petitioner in W.P. No.9000/13 is a tenant of the petitioner and has nothing to do with the title to the property.

12. It is further averred by the petitioner that the petitioner in W.P. No.9000/13 has already filed O.S. No.29/08 on the file of the district Munsif, Chengalpet for bare injunction claiming the subject property by virtue of a oral partition and no documents in support thereof has been filed and no interim orders have been granted in his father. It is further averred by the petitioner that the petitioner in W.P. No.9000/12 has no cause of action to challenge the acquisition proceedings and the petitioner and other legal heirs of Jawarilal Jamad had accepted the acquisition, which is for a larger public purpose, and had accepted the compensation paid by the 2nd respondent. Therefore, the award amount having been paid to the petitioner after enquiry and upon proper appreciation of the title of the petitioner, the impugned notice calling upon him to deposit the compensation received is bad and, therefore, it is liable to be set aside.



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13. Learned counsel appearing for the petitioners in W.P. No.9000/13 submitted that the petitioner having come into possession of the subject property by means of oral partition and is in possession and enjoyment of the land and building along with the petrol pump put up therein, he is an interested party as per Section 15 (2) of the Act and without hearing the petitioner and considering the objections, the compensation awarded to the legal heirs of Jawarilal Jamad is wholly unsustainable as it is an infraction of the mandatory requirements provided u/s 15 (2) of the Act.

14. It is the further submission of the learned counsel for the petitioners that the notification having been issued in the name of a dead person and the compensation have been issued in the name of the dead person, the whole acquisition proceedings stands vitiated as no notice could be issued in the name of the dead person.

15. It is the further submission of the learned counsel for the petitioner that till the suit in O.S. No.29/08, filed by the petitioner is decided, the counter claimants, viz., the petitioner in W.P. No.14255/13 cannot be allowed to claim the



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compensation as otherwise it would cause prejudice to the petitioner and, therefore, the notice directing the petitioner in W.P. No.14255/13 has been rightly issued. Accordingly, he prays for appropriate directions.

16. To substantiate the aforesaid contentions, learned counsel placed reliance on the following decisions :-

- i) *Savithiriammal – Vs – State of Tamil Nadu & Anr. (W.A. No.2105/2004 – Dated 17.06.2006); and*
- ii) *The District Collector & Ors. – Vs – V.Amsam & Ors. (W.A. Nos.161, 162 & 369/2006 – Dated 06.08.2009)*

17. Per contra, learned counsel appearing for the petitioner in W.P. No.14255/13 submits that in the suit, viz., O.S. No.29/08, filed by the petitioner in W.P. No.9000/13, the petitioner has not substantiated his case by filing any evidence to support the oral partition and merely pleading an oral partition without there being any contemporaneous material to substantiate the oral partition, the court below has rightly not granted any interim orders. Therefore, mere pendency of the suit in O.S. No.29/08 would not be a bar for the petitioner to receive the compensation as, as on the date of the enquiry, the title to the



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property vests with the petitioner and other legal heirs of Jawarilal Jamad and the revenue records also stand in the name of Jawarilal Jamad.

18. It is the further submission of the learned counsel that the petitioner and other legal heirs of Jawarilal Jamad having not questioned the acquisition proceedings as being issued in the name of a dead person, viz., their father, and have participated in the enquiry proceedings and accepting the noble purpose for which the portion of the land is sought to be acquired, having accepted the compensation and received the same, the petitioner in W.P. No.9000/13, having no interest in the party, but just being a tenant, cannot be said to be an interested party within the meaning of Section 15 (2) of the Act and cannot claim the benefit of the decisions relied on with regard to non-grant of opportunity as also the notification having been issued against a dead person, as the legal heirs of Jawarilal Jamad alone are the persons interested, who could question the acquisition. Merely because the petitioner in W.P. No.9000/13 is a tenant and the brother of Jawarilal Jamad, cannot question the acquisition on the above grounds, more so, when no interim orders have been obtained by him in the suit in O.S. No.29/08. Therefore, it is submitted that the petitioner in W.P.



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No.9000/13 has no locus to question the acquisition and the petition in W.P.

No.9000/13 deserves to be dismissed.

19. Insofar as the petition filed by the petitioner is concerned, it is submitted by the learned counsel that the petitioner, being the legal heir of the title holder of the property, viz., Jawarilal Jamad, along with the other legal heirs have accepted the compensation, which are rightfully their share towards the acquisition of lands and, therefore, the notice issued by the 2nd respondent directing deposit of the compensation received does not arise and, therefore, necessarily the said notice deserves to be set aside.

20. On the above contentions, this Court heard the learned Special Government Pleader appearing for the official respondents, who submits that the compensation having been paid to the legal heirs of the title holder, who have not questioned the acquisition, the petitioner in W.P. No.9000/13 has neither locus to question the acquisition nor the compensation paid to the legal heirs of the title holder. It is therefore the submission of the learned Special Government Pleader that the official respondents having paid the amount to the legal heirs of



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the title holder, their act cannot be found fault with and no interference is warranted with the acquisition. It is further submitted by the learned Special Government Pleader that subject to the result of the suit in O.s. No.29/08 filed by the petitioners in W.P. No.9000/13 this Court may permit them to work out their remedies in the manner known to law.

21. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

22. There is no quarrel with the proposition of law pointed out through the decisions rendered by this Court in *Savithiriammal's case* and *amsam's case (supra)*. It has been repeatedly held by the Courts that notice/noitification issued in the name of dead person and the proceedings with respect to the said lands cannot be sustained. This Court is in respectful agreement with the ratio laid down in the aforesaid decisions. However, the said decisions would not be applicable to the case of the petitioner in W.P. No.9000/13, as the said case falls in a different sphere.



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23. Though the petitioner in W.P. No.9000/13 questions the notice/notification issued in the name of a dead person and contends that the same is hit by the aforesaid decisions, however, it is to be pointed out that the petitioners in W.P. No.9000/13 have no locus to question the aforesaid acquisition, as the petitioners in W.P. No.14255/13, who are the legal heirs of Jawarilal Jamad, the title holder of the subject land and in whose name the revenue records stand, have accepted the notice/notification issued in the name of Jawarilal Jamad, who was dead on the date of the said notification and without raising any quarrel, have participated in the enquiry proceedings and have accepted the compensation paid. The petitioner in W.P. No.9000/13, at the most, contends that by virtue of an oral partition, the subject lands along with building and the petrol bunk devolved on him. However, there is no evidence to substantiate the said stand and only to obtain title to the subject land, the petitioners in W.P. No.9000/13 have filed suit in O.S. No.29/08, which is pending before the District Munsif Court, Chengalpet. It is also to be pointed out that no interim orders have been passed in the said suit and that being the admitted position, at this point of time, there is no material in and by which the petitioners



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could stake a claim over the subject lands as if the said lands devolved upon the petitioners in W.P. No.9000/13 by way of oral partition.

24. It is to be pointed out that a sale deed of the year 1963 has been filed by the petitioner in W.P. No.14255/13 to establish the title of Jawarilal Jamad over the subject lands. The only contention of the petitioners in W.P. No.9000/13 with regard to the same is that the subject lands, which were purchased on the basis of the aforesaid sale deed, are joint family properties, which was purchased in the name of Jawarilal Jamad and, therefore, the oral partition entered into between the 1st petitioner in W.P. No.9000/13 and Jawarilal Jamad would give the petitioners in W.P. No.9000/13 the required locus to question the acquisition, as they would very well fall within the category of interested persons provided u/s 15 (2) of the Act. Though such a contention, on first blush looks attractive, but the same cannot be countenanced for the simple reason that the legal heirs have the predominant position to raise any dispute with regard to issuance of notice against a dead person. The petitioner in W.P. No.9000/13 could, only after the attainment of finality of the suit in O.S. No.29/08 could claim any right over the property, subject to the result of the suit



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and for the present, the petitioner in W.P. No.9000/13 cannot have better title than the title holder, viz., the legal heirs of Jawarilal Jamad. That being the case, the word *“any other person having interest”* as found u/s 15 (2) of the Act will not take within its fold the petitioners in W.P. No.9000/13 and, therefore, they cannot seek the indulgence of the requisitioning body to have their objections heard. In order to fall within the parameters of *“any other person having interest”* as provided u/s 15 (2) of the Act, the persons, who claim interest over the subject land should have some right and title over the said lands and mere claim of oral partition without any official backing in the form of decree from the court below would not bring the said persons within the ambit of *“any other person having interest”* as provided u/s 15 (2) of the Act. Therefore, the contentions raised on behalf of the petitioners in W.P. No.9000/13 would not suffice to hold that the petitioners in W.P. No.9000/13 do have interest over the subject lands to seek the relief granted under Section 15 (2) of the Act.

25. However, it should not also be lost sight of that the petitioners in W.P. No.9000/13 have filed suit in O.S. No.29/08 on the file of the District Munsif Court, Chengalpet claiming the relief of bare injunction, which is pending as on



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date. The outcome of the said suit cannot be prejudged by this Court, on the materials available before it, that too under its extraordinary jurisdiction under Article 226 of the Constitution, as the result may swing either way based on oral and documentary evidence to be placed at the time of trial. However, this Court has expressed its mind only on the basis of the materials as is available on record before it.

26. At this juncture, learned counsel appearing for the petitioner in W.P. No.14255/13 fairly concedes that in the event of the petitioner in W.P. No.9000/13 succeeding either in full or part in the suit in O.S. No.29/08, the petitioner in W.P. No.14255/13 would pay the compensation that the petitioners in W.P. No.9000/13 would be entitled to based on the decree in the suit subject to his liberty to challenge the said order.

27. In view of the above, W.P. No.14255 of 2013 is allowed quashing the notice issued by the 2nd respondent directing the petitioner to deposit the compensation. Consequent to the aforesaid order and in view of the fair stand taken by the learned counsel appearing for the petitioner in W.P. No.14255/13,



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W.P. No.9000/13 is disposed of with a direction to the petitioner in W.P. No.14255/13 to pay the compensation that the petitioners in W.P. No.9000/13 would be entitled to based on the decree in the suit in O.S. No.29/08 with further liberty to the petitioner in W.P. No.14255/13 to challenge the said judgment/decreed passed by the court below.

28. In the result, W.P. No.14255/13 is allowed and W.P. No.9000/13 is disposed of with the aforesaid observations and directions. There shall be no order as to costs.

12.07.2022

Index : Yes / No

Internet : Yes / No

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To

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Highways & Minor Ports Dept.
Fort St. George, Chennai 600 009.
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M.DHANDAPANI, J.

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**PRE-DELIVERY ORDER IN
W.P. NOS.9000 & 14255 OF 2013**

**Pronounced on
12.07.2022**