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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
01.08.2022	24.08.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.4706, 17401, 18073, 17381, 18680 & 18755 OF 2020
W.P. NOS. 559, 1598, 1059, 5002, 7949, 8637 & 8752 OF 2021
AND
W.M.P. NOS.23306, 23200, 23198, 23202, 22453, 21368, 21543, 21577, 21578, 22451, 22452, 21367, 21987, 23310 & 5561 OF 2020
W.M.P. NOS. 11013, 13125, 8501, 5580, 5585, 8500, 9188, 1199, 1808, 1805, 622, 9189, 9285, 5578, 621, 1807, 1202 & 9284 OF 2021 & 14572 OF 2022

W.P. NO. 8752 OF 2021

G.V.Jagatheesan .. Petitioner

- Vs -

1. The Government of Tamil Nadu
Rep. by Secretariat of Government
By Highways & Minor Ports Department
Fort St. George, Chennai 600 009.

2. The Commissioner of Land Administration
Chapauk, Chennai 600 005.

3. The Special District Revenue
Officer (Land Acquisition)
Chennai – Kanyakumari Industrial Corridor

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Project, Salem. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records on the file of the 2nd respondent in proceedings in ROC No.CKICP/CLA15(1)/SH79/46/2020 dated 18.9.2020 and quash the same as illegal, incompetent and without jurisdiction.

For Petitioners : Mr. V.Natarajan in WP 4706/2020
Mr. A.Navaneethakrishnan, SC, for
Mr. O.R.Mahadevan in WP 18680, 18073/20, 559 and 1598/2021
Mr. T.Senthilkumar in WP 17401/20
Mr. P.Dinesh Kumar in WP 1059/21
Mr. R.Poornima in WP 5002/21
Mr. R.Chandrasekar in WP 7949/21
Mr. V.Raghavachari in WP 8752/21
Mr. S.Thirumavalavan in WP 18755/20
Mr. K.Raja in WP 8637/21

For Respondents : Mr. J.Ravindran, AAG, assisted by
Mr. P.Sathish, AGP

COMMON ORDER

The present batch of writ petitions assail the acquisition of lands for the purpose of formation of the industrial corridors promoting Port based Industrialization in the Chennai – Kanyakumari Industrial Corridor by issuance of

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notice u/s 15 (1) of the Tamil Nadu Highways Act, 2001, vide the impugned Gazette Notification dated 18.09.2020.

2. It is the case of the petitioners that vide G.O. Ms. No.28 dated 6.3.2018, and on the advice of the Chief Engineer, Construction & Maintenance, accorded administrative sanction for the purpose of development of roads for facilitating the easy movement of the vehicles through the East Coast Economic Corridor. The key objectives of the Chennai – Kanyakumari Industrial Corridor is identification, planning and evelopment of industrial nodes complimented by Urban Industrial nodes, which would cover 13 districts and useful in promotion of business in the entire State.

3. It is the further averment of the petitioner that pursuant to the request, the Government accorded sanction for the road work to be undertaken which included the area where the property of the petitioners are also situate. The 2nd respondent caused publication of notification u/s 15 (1) of the Tamil Nadu Highways Act for the strengthening and widening State Highways 79, which was published in the Government Gazette dated 18.9.2020.

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4. It is the averment of the petitioner that the classification of the road has not been clearly defined by the Government while causing the publication in the Government Gazette consequent upon which the Highways authority of the Division, by way of notification shall undertake to fix the boundary, which is provided for u/s 8 of the Tamil Nadu Highways Act. It is the further averment of the petitioner that duty is cast on the authority to fix the boundary line, which is important, as the aggrieved person could raise objection and suggestions by filing necessary representation, which may even result in dropping of the proposal and the said procedure is mandatory. However, without adverting to the procedure prescribed u/s 8 of the Act, the authority without fixing the boundary line, had gone ahead and issued the notification, which resulted in notice to the petitioners to appear for enquiry. It is the further averment of the petitioners that they had asked for particulars u/s 8 to 14 of the Act, however, the respondents feigned ignorance of the documents and refused to receive the objection.

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5. It is the further averment of the petitioners that environment clearance, which is a mandatory condition for laying or road is required, which has not been obtained. The environmental assessment has not been carried out by the authorities before placing the proposal for the highways project. In view of gross violations with regard to the provisions of the Highways Act and the Environment Protection Act, the present writ petitions have been filed.

6. The learned counsel appearing for the respective petitioners submit that fixation of highway boundary line as provided u/s 8 (1) of the Tamil Nadu Highways Act (for short 'the Act') is mandatory. However, without issuing any notification u/s 8 (1), the respondents have gone ahead with the issuance of notification for acquisition of lands u/s 15 (1), which is clear infraction of provisions and violation of the rights of the petitioners.

7. It is the further submission of the respective learned counsel that the objections filed by the petitioners u/s 8 and 15 (2) and Rule 5 (2) of the Tamil Nadu Highways Rules, have not been forwarded by the Collector to the State Government. It is the submission of the learned counsel that the Collector is not

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vested with any power to reject the land owners objections and the duty of the Collector is just to forward the objections to the Government and it is only the Government, who is the competent authority to consider the objections of the land owners and pass orders thereon. Since the said objections have not been rejected by the appropriate authority, but an authority not vested with jurisdiction, the same vitiates the entire acquisition process.

8. It is the further submission of the learned counsel that no proper enquiry as mandated under the Act has been conducted by the respondents, as the petitioners have not been given an effective participation in the enquiry and further the views of the Highways Department to the objections of the petitioners have not been communicated to the petitioners, which also vitiates the acquisition.

9. It is the further submission of the respective learned counsel that insofar as few of the writ petitions are concerned, interim orders were granted by this Court due to which the project has been completed without acquiring the said lands. Such being the case, the petitioners, whose lands have been the

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subject matter of the same acquisition should also be given the benefit of the said order by quashing the acquisition proceedings.

10. It is the further contention of the learned counsel for the petitioners that an iron bridge already exists in the alignment in which the road is to be constructed. Such being the case, the alignment could be altered by the Highways authority so that the bridge can be used for construction of the project, thereby the acquisition of lands of the petitioners could be avoided. However, inspite of the fact that representation was given in this regard by the petitioners, the same has not been considered by the respondents and it has been rejected, which also vitiates the acquisition proceedings.

11. It is the further submission of the learned counsel for the petitioners that as per the gazette notification issued u/s 15 (1), the lands were proposed to be acquired for the said project. However, the satisfaction of the Government regarding the requirement for acquisition of the land for the said project is not reflected in the gazette notification, which renders the notification *per se* defective.

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12. It is the further submission of the learned counsel that terminology used in the notification issued u/s 15 (1) is that the lands are *"to be acquired",* which shows that the lands are not yet acquired and, therefore, it cannot be assumed that the land has vested with the Government. Such being the case, the Government cannot enter into the land and the defect in the notification renders the acquisition process vitiated. Accordingly, learned counsel prays for allowing the writ petitions.

13. Per contra, learned Addl. Government Pleader appearing for the respondents submitted that notification in the gazette with regard to acquisition of lands for the purpose of the Highways project was duly notified u/s 15 (1) and 15 (3) of the Act and that the Commissioner of Land Administration was delegated with the authority to deal with the subject acquisition.

14. It is the further submission of the learned Addl. Government Pleader that the contention of the petitioners that the usage of the terminology *"are to be acquired"* in the notification issued u/s 15 (1) will not vest the land with the

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Government is wholly a misconception as Section 16 provides that upon a notification being issued u/s 15 (1), the lands, which are to be acquired would vest with the Government.

15. It is the further submission of the learned Addl. Government Pleader that not only the road has been classified, way back in the year 2003, as a State Highway, the fixation of boundary line is only a directory procedure and not a mandatory procedure. It is the further submission of the learned Addl. Government Pleader that only for future development and expansion of the roads, for preserving sufficient space, the fixation of boundary line has been made and it is a directory procedure and merely because the said procedure has not been followed the same would not vitiate the acquisition proceedings.

16. It is the further submission of the learned Addl. Government Pleader that environmental clearance is required only in respect of expansion of State Highways on hilly terrain or in ecologically sensitive areas, as per the Environmental Assessment Notification dated 14.9.06. The present acquisition not falling with the said category, environmental assessment clearance is not

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required. Therefore, learned Addl. Government Pleader prays for dismissal of the writ petitions.

17. This Court paid its careful consideration to the submissions advanced by the learned counsel appearing for the petitioner and the learned Addl. Government Pleader appearing for the respondents and perused the materials available on record. In order to satisfy itself, the Court had also directed the respondents to produce the file pertaining to the acquisition process, which was also produced before this Court and the same was perused.

18. Three-fold contentions have been raised on behalf of the petitioners, viz.,

i) That the fixation of boundary line as provided u/s 8 (1) of the Act has not been followed;

ii) That the objections of the lands owners submitted during different points of time were rejected by an authority, not competent to reject the same as it is only the Government, which is vested with the power to reject the objections; and

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iii) That when there exists feasibility to alter the alignment of the highway by using the existing iron bridge, merely to deprive the petitioners of their lands, the present alignment has been proposed.

19. Insofar as the contention relating to the procedure prescribed u/s 8 (1) of the Act not being followed, the contention of the petitioners is that it is a mandatory procedure, which cannot be given a go-by and in the absence of fixing the boundary line, the acquisition proceedings would stand vitiated.

20. Though such a contention is advanced at the threshold, however, it is to be pointed out that this Court in ***N.R.Marappan – Vs – The District 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)*** has 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*

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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."

21. 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 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

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recorded by the High Court though our concurrence with the said conclusion is on slightly different grounds, as indicated above."

22. 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, including the fixing of boundary line aspect 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-fixing of boundary line u/s 8 (1)

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could also very well be taken. That being the case, the right of the petitioners cannot be said to have been nullified merely because the exercise of fixing the boundary line has not been taken up by the respondents. Therefore, the contention with regard to non-compliance of the provision u/s 8 (1) of the Act does not merit acceptance.

23. Coming to the next of the contention raised on behalf of the petitioners relating to the negation of the objection by the authority, who is not vested with jurisdiction, it is the stand of the respondents that the Commissioner of Land Administration has been delegated with power to look into the objections and pass orders on the same and, accordingly, the Commissioner of Land Administration has taken up the matter and passed orders rejecting the objections raised by the petitioners.

24. It is to be pointed out that it is trite that delegation of power is normally resorted to by the Government with regard to consideration of objections at the time of enquiry. Though the final verdict would very well be with the Government, that would be only with regard to the compensation

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quantified to be paid to the land owners. Further, a careful perusal of Section 15 (2) would make it unambiguously clear that before publishing a notice u/s 15 (1) 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. The word used therein is the Government, which clearly means that it is the authority delegated by the Government, who will be clothed with the jurisdiction to call upon the land owners and deal with the objections raised by the land owners.

25. Literal interpretation of the word Government cannot be scribed by this Court as it would leave a gaping hole with regard to the specific authority who would be conferred with jurisdiction to deal with the issue. It is a matter or record that the Government runs on the delegation of powers to the authorities down the hierarchy and it cannot be that foe each and every act to be done by the Government, it is the highest authority who would be passing the order. In the case on hand, as has been submitted by the respondents, the Commissioner of Land Administration has been delegated with the powers to deal with the objections raised by the land owners. Such being the case, in the absence of any contra material, the contention of the petitioners that the objections u/s 8 (1), 15

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(2) and Rule 5 (2) have been passed by an authority, who is not vested with jurisdiction does not deserve acceptance.

26. Further, one other aspect which also needs to be considered in the above backdrop, is the fact that suggestion was given by the petitioners for finding alternative route to reroute the industrial corridor. It is the contention of the petitioners that their suggestion have not been taken into consideration in the proper perspective while approving the route through which the industrial corridor would pass. However, it is the stand of the respondents that the alternative suggestion given for rerouting had been taken into consideration and it was found not feasible and, therefore, the said suggestion was dropped. In this regard, the respondents vehemently submitted that the courts shall not enter into the domain of the experts with regard to technical issues and it is best left to the experts to decide, which would be the better way to proceed with the project. Further, it is submitted that it has been the consistent view of the courts that the courts shall not substitute its opinion to that of the experts, who have approved a certain proposal, as it is not within the domain of the Court to step into the shoes of the experts.

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27. In this regard, useful reference can be had to the decision of 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*

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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 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."

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28. The decision of 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 alternative route 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 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."*

29. From the aforesaid decisions, it is emphatically clear that feasibility is one of the main concerns which needs to be addressed coupled with balancing the conflicting interests, which are the pivotal points to be considered while considering the proposal for alternative route. It has been laid down that those

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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 have chosen a particular route 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.

30. In this regard, the decision of the Hon'ble Apex Court in ***Union of India – Vs – Kushala Shetty (2011 (12) SCC 69)*** has been pressed into service but it is countered by the petitioners stating that the aforesaid decision would not stand attracted to the case on hand, as the said decision dissects only the technical expertise of the National Highways and not of the State Highways. For better appreciation, the relevant portion of the decision is quoted hereunder :-

> *"24. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having*

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vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it is found to be ex-facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained."

31. Though such a stand is taken by the petitioners, however, this Court is not inclined to endorse the said view of the petitioners for the simple reason that giving any such finding with regard to the technical expertise of the National Highways and State Highways not being equal would have far-reaching consequences. Further, it is to be pointed out that the State Highways is also manned by persons with technical knowledge of the know-how of things related

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to infrastructure development of roads. It is not as if a novice is being made to sit in the seat as the head of the State Highways Department, who takes decisions unmindful of its consequences. The infrastructural development of a State, through its vehicular traffic movement is a technical issue, which would have larger ramifications, if it is not handled in a manner judicially, as it involves the movement of both public transport and goods movement. The relative factors would all be a determinative factor in selecting a particular alignment which would subserve the larger interest of the public. In such a scenario, importing this Court's view with regard to any other better alignment would be against the well established precedents. Therefore, the contention with regard to change in alignment, put forth on behalf of the petitioners cannot be affirmatively considered by this Court.

32. The other contention of the petitioners is that the Government have predecided to acquire the lands and, therefore, the conduct of enquiry u/s 15 (2) is merely a farce and the further contention that by the notice u/s 15 (1) of the Act, the Government have mentioned their intention that the lands are *"to be acquired"* and, therefore, the lands would not vest with the Government and

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such being the case, the Government could not enter into the lands as per Section 16 of the Act.

33. Though such a contention is advanced, however, the said contention is nothing but an act of the petitioners in clutching at the last straw available to them to thwart the acquisition process. Section 15 of the Act speaks of the a notice whereby the Government speaks about its intention to acquire the lands. Section 16 mandates that once a notice of its intention to acquire is published u/s 15 (1) of the Act, the lands automatically vests with the Government. The two provisions are attendant on each other as once Section 15 (1) Notice is issued, Section 16 automatically comes into play. Therefore, the contention of the petitioners that there being no authority to the Government to enter upon the lands as the acquisition has not yet taken place would not stand judicial scrutiny for the reason that immediately on the notification u/s 15 (1) being issued, the lands, which are sought to be acquired, vest with the Government. Therefore, this contention also does not merit acceptance.

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34. The ancillary contention that some of the writ petitioners have obtained stay and without touching upon the lands the project has been undertaken and, therefore, the acquisition proceedings in respect of the lands of other land owners cannot be allowed to survive.

35. It is to be pointed out that the project has been taken up and is proceeding and merely because stay has been granted in and by which the lands of the said land owners have not been touched would not grant any benefit to even the said land owners, as any stay would always would be subject to the final result of the writ petitions. This Court, for the reasons aforesaid, having rendered a finding that the contentions made against the acquisition process does not merit acceptance and is inclined to dismiss the writ petitions, any interim direction that had been passed would automatically stand obliterated and the beneficiaries of the said order cannot enforce the said order any further.

36. For the reasons aforesaid, the writ petitions are liable to be dismissed and, accordingly, the same are dismissed. Consequently, connected miscellaneous petitions are also dismissed. There shall be no order as to costs.

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To

1. The Secretary to Government
By Highways & Minor Ports Department
Government of Tamil Nadu
Fort St. George, Chennai 600 009.

2. The Commissioner of Land Administration
Chapauk, Chennai 600 005.

3. The Special District Revenue
Officer (Land Acquisition)
Chennai – Kanyakumari Industrial Corridor
Project, Salem.

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M.DHANDAPANI, J.

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PRE-DELIVERY ORDER IN
W.P. NOS.4706 OF 2020, etc. Batch

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