

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.7416 of 2016

And

W.M.P.No.6632 of 2016

C.Rajendran

... Petitioner

Vs.

1. National Highways Authority of India,
Rep. by its Project Director,
Office of the Project Implementation Unit (NS),
Door No.212-3/D3-1
Srinagar Colony, Narasothipatty,
Salem - 636 004.
2. National Highways Authority of India,
Rep. The Deputy General Manager,
Office of the Project Implementation Unit (NS),
Door No.212-3/D3-1
Srinagar Colony, Narasothipatty,
Salem - 636 004.
3. The Competent Authority - Cum -
Special District Revenue Officer,
(Land Acquisition)
National Highways Authority of India,
No.7, 46, 47, 68,
Salem - Dharmapuri District at Krishnagiri.
4. The Special Tahsildar (Land Acquisition),
National Highways Authority of India,
N-68, Attur (E),
Salem.
5. The Government of India
Rep. by its Director General
(Road Development)
Special Secretary,
Ministry of Shipping,
Road Transport and Highways,
(Department of Road Transport and
Highways) New Delhi.

(R5 - impleaded as per order
dt.07.12.2017 by NSSJ in WMP
No.16949/16 in WP.7416/16)

... Respondents

Prayer:Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the second respondent dated 30.05.2015 in NHAI/PIU-Salem/NH-7/2015/272, and quash the same and consequently direct the respondents to forthwith re-convey the lands of the petitioner comprised in Survey No.29/3, measuring 3512.4 square meters situated at Sandhiyur Village, Salem Taluk, Salem District, to the petitioner.

For Petitioner : Mr.K.Selvaraj

For Respondents : M/s.Sapna I Pillai
for M/s.P.Wilson Associates
for R1 and R2
Mr.R.Vigneswaran for R3 and R4
Mr.B.Sudhir Kumar for R5
SPC

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus calling for the records relating to the order of the second respondent dated 30.05.2015 in NHAI/PIU-Salem/NH-7/2015/272, and to quash the same and to consequently direct the respondents to forthwith re-convey the lands of the petitioner comprised in Survey No.29/3, measuring 3512.4 square meters situated at Sandhiyur Village, Salem Taluk, Salem District, to the petitioner.

2.The case of the petitioner is that the respondents acquired the lands of the petitioner and others for the purpose of four - laning of the National Highways No.7 at Sandhiyur Village and for the purpose of construction of Toll Plaza. Though the respondents have completed the four - laning of the National Highways, they have not constructed the Toll Plaza. Hence, the petitioner made representation to the respondents to return the land acquired for the purpose of construction of Toll Plaza. However, the respondents informed the petitioner that the lands acquired under Section 3 - D of the National Highways Act, 1956 cannot be re-conveyed. Challenging the same, the petitioner has filed this writ petition.

3.The learned counsel appearing for the petitioner submitted that though there is no provision for re-conveyance of the land to the original owner, the Central Government only have power to decide the issue, however, the second respondent has passed the impugned order which is un-sustainable one.

4.The learned counsel appearing for the respondents 1 and 2 submitted that admittedly, there is no provision available for re-conveying the land. If there is any provision available, then the second respondent would have forwarded the petitioner's representation to the Central Government for taking appropriate decision. The learned counsel further submitted that the issue involved in the writ petition has already been considered by the Hon'ble Division Bench of the Madurai Bench of this Court in the decision reported in MANU/TN/0907/2018 [A.Rajendran and Others Vs. The Special District Revenue Officer (Land Acquisition), National Highways and Others] and by this Court in the decision reported in MANU/TN/0801/2007 [Shri Andal Alagar Kalyana Mandapam Private Limited and Others Vs. The Union of India (UOI) and Others].

5.Heard the arguments advanced on either side and perused the materials available on record.

6.The facts in the present case is not in dispute. The petitioner's land was acquired by the respondents for the purpose of four - laning of the National Highways No.7 at Sandhiyur Village and for the purpose of construction of Toll Plaza. Though the respondents have completed the four - laning of the National Highways, they have not constructed the Toll Plaza. Hence, the petitioner made representation to the respondents seeking re-conveyance of the land acquired for the purpose of construction of Toll Plaza. However, the respondents informed the petitioner that the lands acquired under Section 3 - D of the National Highways Act, 1956 cannot be re-conveyed.

7.Admittedly, there is no provision available for re-conveyance of the acquired lands under the National Highways Act, 1956. The issue involved in the present case is no longer res integra. The issue has already been considered by the Hon'ble Division Bench of the Madurai Bench of this Court in the decision reported in MANU/TN/0907/ 2018 [A.Rajendran and Others Vs. The Special District Revenue Officer (Land Acquisition), National Highways and Others] and by this Court in the decision reported in MANU/TN/0801/2007 [Shri Andal Alagar Kalyana Mandapam Private Limited and Others Vs. The Union of India (UOI) and Others]. It is appropriate to extract hereunder the relevant portions:

(i) MANU/TN/0907/ 2018 [A.Rajendran and Others Vs. The Special District Revenue Officer (Land Acquisition), National Highways and Others]:

"24. As rightly contended by the learned Standing Counsel appearing for the second respondent, the formalities/ procedures prescribed under the NH Act have been scrupulously complied with and the lands in question absolutely vest with the Central Government and in the absence of any provision for reconveyance, the prayer sought for by the appellants/writ petitioners cannot be granted."

(ii) MANU/TN/0907/ 2018 [A.Rajendran and Others Vs. The Special District Revenue Officer (Land Acquisition), National Highways and Others]:

"48. Coming to the events after the submission of the alternative proposal, it is seen from the scheme of the Act that there is no provision in the Act either for divesting or for reconveyancing, of a land which vests with the Central Government. While under the Land Acquisition Act, 1894, the Government is given liberty to withdraw from the acquisition, of any land, of which, possession has not been taken, under Section 48(1) of the Act and there is also a provision for reconveyance under Section 48-B of the Act, in so far as the State of Tamil Nadu is concerned (by virtue of Tamil Nadu Amendment Act 16 of 1997), there is no similar provision in the National Highways Act, 1956. In order to remove any doubt about the possible invocation of the provisions of the Land Acquisition Act, 1894, the National Highways Act, 1956, makes it clear under Section 3-J that "nothing in the Land Acquisition Act, 1894, shall apply to an acquisition under this Act".

49. In the light of the scheme of the National Highways Act, 1956, and the absence of any provision for divesting or re-conveyancing, I am unable to see how far the respondents including the fourth respondent could have gone, in considering the alternative proposal submitted by the petitioners, after the land vested with the Central Government.

Interestingly, there is not even a provision in the National Highways Act, 1956, akin to Section 11-A of the Land Acquisition Act, 1894, whereby the acquisition proceedings would lapse for the failure of the Collector to pass an Award within a prescribed period. The only provision in the National Highways Act, 1956, by which the proceedings shall lapse, is found in Section 3-D(3). It prescribes that if a declaration under Section 3-D(1) is not published within one year of a notification under Section 3-A (1), the notification shall cease to have effect.

51. If the allegation of mala fide exercise of power is tested in the context of the absence of any provision for divesting or reconveyancing or for allowing the proceedings to lapse, the conclusion is inevitable that the fourth respondent could have done nothing in favour of the petitioners. As a matter of fact, if the respondents had done anything in favour of the petitioners, by considering the alternative proposal favourably, the same might have come under attack from other land owners, as a mala fide exercise of power in favour of the petitioners. It is seen from the orders passed under Section 3-C(2) of the Act by the Competent Authority that even at that stage, many other land owners came up with alternative proposals for a "realignment of the grade separator" so as to avoid or minimise the impact of acquisition. All those proposals for realignment were rejected by the Competent Authority in his order under Section 3-C (2). Therefore, if the alternative proposal submitted by the petitioners after the declaration under Section 3-D(1) had been considered favourably, the other land owners would have come up with a challenge to the entire proceedings, on the same grounds on which the petitioners have now come, with the only difference that their case might be on a stronger footing in view of the absence of any provision in the Act for divesting or recon-veyancing or for allowing the proceedings to lapse. Therefore, I am unable

to countenance the challenge of the petitioners to the acquisition proceedings, as well as to the rejection of the alternative proposal, on the ground of mala fides.

8.Hence, in the absence of any provision for re-conveyance of the lands acquired under the National Highways Act, 1956, the prayer sought for in this petition cannot be considered.

9.The writ petition is accordingly dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Project Director,
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Salem.

5. The Director General
Government of India
(Road Development)
Special Secretary,
Ministry of Shipping,
Road Transport and Highways,
(Department of Road Transport and
Highways) New Delhi.

+1cc to Mr.K.Selvaraj, Advocate, S.R.No.35663
+1cc to M/s.P.Wilson Associates, Advocate, S.R.No.35569
+1cc to the Government Pleader, S.R.No.36177

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AJS[co]
NSK/13/07/2022