



W.P. No.20156/2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
26.09.2022	11.10.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.20156 OF 2020

AND

W.M.P. NOS.24893 & 24895 OF 2020 & 3313 & 3314 OF 2021

Muthuvijaya

.. Petitioner

- Vs -

Administration (FAC)
Chepauk, Chennai – 5.

1. The Commissioner of
Land

Land Acquisition
Chennai – Kanniyakumari Industrial
Corridor Project
Plot No.74, Vijayaragavan Nagar
Jageer Ammapalayam, Salem 636 302.

2. The Special District
Revenue Officer

Tamil Nadu Road Sector Project – II
Salem.

3. The Divisional Engineer
(H)



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4. The Divisional Engineer
(H)

Chennai – Kanyakumari Industrial
Corridor Project, Vaigai Street
Nedunchalai Nagar, Bye-Pass Road
Salem – 5.

5. The Government of
Tamil Nadu

Rep. by its Secretary
Highway & Smaller Ports Department
Fort St. George, Chennai – 9.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari mandamus calling for the entire records on the file of respondents 1 and 2 in respect of the issue of impugned orders, viz., Notice issued u/s 15 (2) of Tamil Nadu Highways Act, 2011 by the 2nd respondent in Na. Ka. No.06/2018 A4/SH-86 dated 11.01.2020 and notice issued u/s 15 (1) of Tamil Nadu Highways Act, 2001 by the 1st respondent in Roc. No.J1/7816/2020 No.VI(1)232(b-10)/2020 published in Tamil Nadu Government Gazette No.290 dated 20.07.2020 Part-VI Section and quash the same and further to direct the respondents to have a comprehensive study for combining the alignment proposed by the RR wing of Highways Department on the southern side of



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Rasipuram SH-79 which meets the said SH-79 at Ch/71/280 and the present By-Pass Road for Omalur-Sankari-Thiruchengode-Paramathy Road SH-86 in a comprehensive manner so as to have the present alignment and to examine alternate alignments so as to cust the Rasipuram road in between Ch/71/280 and Ch/71/990 so as to have shorter length and resulting lesser expenditure after duly studying alternate alignments by a competent authority objectively for merits and demerits following the standards and procedures as stipulated in Indian Road Congress and to choose the one satisfying all the technical parameters and requiring minimum land acquisition cost.

For Petitioners : Mr. N.Subramaniyan

For Respondents : Mr. B.Vijay, AGP

ORDER

Assailing the acquisition of land under the Tamil Nadu Highways Act, 2001 (for short 'the Act') and contending that no proper technical study has been undertaken with regard to the merits and demerits and non-consideration of the suggestion with regard to alternate alignments resulting in lesser expenditure, the present petition has been filed.



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2. It is the case of the petitioner that the subject lands, which have been notified for acquisition by issuing notice u/s 15 (1) are agricultural lands, which are being cultivated and that it is located abutting the Rasipuram-tiruchengode Road, i.e., SH-79, approximately in between KM 70/985 to 71/170. It is the further case of the petitioner that notice dated 11.1.2020 was issued by the 2nd respondent u/s 15 (2) of the Act seeking to acquire the lands for public purpose for forming a By-Pass Road to Omalur-Sankari-Thiruchengode-Paramathi, i.e, SH-86 under Chennai-Kanniyakumari Corridor Project to by-pass Tiruchengode Town.

3. It is the further case of the petitioner that the land owners, whose lands were sought to be acquired were called upon by the 2nd respondent by way of notice dated 30.07.2020 issued u/s 19 (2) of the Act to attend the award enquiry on 8.8.2020 in which objections were made by certain land owners and the land owners were informed that four times the market value would be paid as compensation. Subsequently, by notice dated 3.10.2020 u/s 19 (5) of the Act, the petitioner was called upon to attend the award enquiry on 20.10.2020. During the enquiry, various issues were discussed including the opposition for the



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shifting of alignment on extraneous considerations. It is the further case of the petitioner that it came to light in the said discussion that the alignment has been shifted on eastern side, towards Rasipuram several times from the junction point of Thiruchengode-Namakkal Road due to the influence of certain land owners. It is the further case of the petitioner that before approving any alignment, certain basic study requires to be undertaken and subject to the said study, which would be based on a rational approach, if any alignment is finalised, there would be no objection/litigation against such land acquisition.

4. It is the further case of the petitioner that to find out whether there had been any influence, which had gone into the shifting of alignments, enquiries were made, which revealed that even a writ petition in W.P. No.22624/2010 was filed before this Court in which direction was issued by this Court to consider the representation of the land owners, which was considered and rejected vide order dated 2.5.2018 of the Chief Engineer, which rejection has been challenged in W.P. No.34559/2018.



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5. It is the further case of the petitioner that the by-pass road proposed for SH-86 for Omalur-Sankari-Tiruchengode-Paramathi road on the eastern side of Tiruchengode cutting Rasipuram road and Namakkal road, which alignment has been finalised by a private consultant, which has been initially proposed to cut Rasipuram road at Ch.71/280 does not affect the properties of the petitioner largely, but, contrary to the previous proposal, under false notion, the new proposal has emanated, which severely affects the properties of the petitioner to the extent of about 1.50 acres without in any way affecting the property of the adjoining owner on the western side, whereas such was not the case with the earlier proposal, as it had considered the implication of the persons both on the eastern side and western side. This clearly shows that the new proposal is only to aid and protect the adjoining land owner on the western side on extraneous considerations.

6. It is the further case of the petitioner that the proposal to shift to Ch.71/185 would not only affect the lands of the petitioner adversely but would avoid two major junctions on the State Highway within a span of 200 mtr., which would not be conducive to the traffic safety. It is the further case of the



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petitioner that no comparative and comprehensive study had been undertaken before finalising the proposed alignment, but the alignment is done only on the basis of the proposal made by the RR wing, which is questioned in W.P. No.34559/2018. Though the petitioner made sustained efforts to obtain all the relevant papers, however, to the petitioner's shock and dismay it was informed that the papers are not available with the 2nd respondent and was advised to move the 4th respondent. It is the further case of the petitioner that the earlier proposal as approved by the Chief Engineer was modified on the basis of the proposal of the RR wing and under the guise of shifting the alignment to avoid staggered alignment, the alignment proposed by the RR wing as well as the one proposed by the private consultant are sought to be shifted under the guise of the inspection report of the Chief Engineer. Technical viability and the detriment that it would cause to the properties of the land owners have not been properly assessed by the respondents before approving the proposal for shifting the alignment. It is the further case of the petitioner that if the proposal takes into consideration the shifting of alignment towards the junction point of Rasipuram and Namakkal Road, i.e., at Ch/71/1990 of Rasipuram Road, the two junctions that are required to be formed, i.e., the one at the cutting point of Rasipuram



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road and another at the cutting point of Namakkal road, viz., the two major intersections within a span of 500 tr., on a State Highway could be avoided to ensure smooth and free flow of traffic.

7. It is the further case of the petitioner that taking the alignment through Ch 71/1990 would result in demolition of few buildings, but shifting the alignment would affect hundreds of farmers, in turn, affecting their livelihood. However, without examining the benefits of the shift and in a callous manner and without proper comparative study, the shifting has been approved, which causes much detriment to the livelihood of many persons. It is the further case of the petitioner that the said issue would not have arisen had the Highways Authority carried out their functions scrupulously as mandated u/s 8 by fixing boundaries after due notice to the land owners and after due declaration of the proposed lands sought to be used as highways as per Section 3 of the Act before issuing land acquisition proceedings. Therefore, for all the above infringements and also for blatant violation of the guarantee provided under Article 300-A of the Constitution of India, the present petition has been filed.



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8. It is the submission of the learned counsel appearing for the petitioner that though the initial alignment approved by the respondents lies between the lands of the petitioner and the lands of the adjoining owner on the western side, however, arbitrarily, for extraneous considerations, the alignment has been subsequently shifted, thereby, affecting the lands of the petitioner to a greater extent to the benefit of the land owner on the western side, which is wholly perverse and unsustainable. It is the further submission of the learned counsel that under the guise of inspection note, the Chief Engineer has exercised his power arbitrarily without any scientific basis without bothering about the risks and safety to the public. The act of the Chief Engineer is nothing but abuse of powers to favour some other person for certain extraneous considerations.

9. It is the further submission of the learned counsel that though the petitioner had sought for production of the file approving the shifting of alignment, yet, only a drawing has been filed before the Court showing the manner in which the alignment flows and the original file with regard to the shifting of alignment is not placed before this Court.



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10. It is the further submission of the learned counsel that the Research Station wing under the Highways Department alone is competent to assess the safety at road junctions and the whims of the execution wing cannot be the basis for shifting the alignment. It is therefore the submission of the learned counsel that the 'X' typed intersection, which has been approved, without analyzing the consequences thereof needs to be considered by the Research wing before the alignment is approved. In a nutshell, it is the contention of the learned counsel for the petitioner that the alignment, which is sought to be shifted from its original proposal is totally flawed and has been done only for extraneous consideration to benefit some persons and has not been done after careful comparative study by the Highways Department and, therefore, necessary direction need to be issued by setting aside the proposal and to undertake a fresh study to find out the best suitable alignment that would be in the interest of the public and would also ease out the traffic congestions at the intersections.

11. Per contra, learned Addl. Government Pleader appearing for the respondents submitted that the proposal for the best alignment should normally be left to the experts to decide and courts shall not enter into the technical issue



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in the matter unless it is shown to be perverse, unreasonable, illegal and unsustainable. It is the further submission of the learned Addl. Government Pleader that merely because the proposal to shift involves much of the lands of the petitioner to be acquired cannot be a ground to claim perversity and merely because the petitioner claims extraneous consideration without placing any materials would only go to show that the petitioner is trying to fish in troubled waters.

12. It is the further submission of the learned Addl. Government Pleader that the Chief Engineer, upon inspection, has approved the proposal for shifting of the alignment, after considering all the aspects and merely because the said shifting involves larger extent of lands of the petitioner to be acquired would not be a ground to castigate the Chief Engineer with *mala fides* unless there are materials to prove the same.

13. It is the further submission of the learned counsel that balancing the conflict of interest between the land owners and the feasibility in having the best possible alignment are best left to the experts and Courts should not infuse its



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hands into the said matter. All the aspects have been considered by the respondents before approving the alignment to shift and, therefore, mere apprehensions of the petitioner cannot be a ground for this Court to interfere in the decision, which is technical in nature and, accordingly, prays for dismissal of the present petition.

14. The sum and substance of the contention advanced on behalf of the petitioner revolves on the shifting of the alignment, which is alleged to have been done without conducting comparative and comprehensive study and, therefore, the same requires to be interfered with.

15. From the above it is clear that the whole crux of the issue pertains to certain technical aspects of the alignment, which has been proposed, which according to the petitioner is not conducive. In this regard, the scope of interference of the Court in matters pertaining to technical issues in a project, has been dealt with by 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 :-



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“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 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 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



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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.”

16. 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 the shifting of alignment for the road 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



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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."

17. From the aforesaid decisions, it is emphatically clear that feasibility is one of the main concerns which need to be addressed coupled with balancing the conflicting interests, which are the pivotal points to be considered while considering the proposal for shifting the alignment. It has been laid down that those 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, viz., Chief Engineer, upon inspection and submission of report, has chosen shifting of alignment in a particular manner and



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such being the case, this Court, under the guise of judicial review, cannot import its decision to that of the experts in the field.

18. True it is that the shifting of alignment from the earlier proposal to the present one has certain detriments insofar as the petitioner is concerned, in that larger extent of lands of the petitioner would need to be acquired for the said purpose by leaving aside the land owner on the western side, whose lands are left almost untouched, but that cannot be the basis for this Court to hold that it is an arbitrary and capricious exercise of power and authority by the respondents and only for the purpose of benefitting the adjacent land owner on the western side the alignment has been shifted. No material whatsoever is placed before this Court to show that the shifting of alignment is only to benefit the adjacent land owner. Mere apprehension and accusation of the petitioner cannot partake the character of proof for this Court to hold that extraneous consideration has played a pivotal part in the shifting of alignment of the road.

19. Further, it is to be pointed out that it has been the consistent view of the Courts that personal interest cannot override the larger public interest. When



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it comes to matters of larger public interest, the personal interest should be relegated to the back seat, else the economic and developmental activity of the country will be greatly hampered.

20. Further, in the case on hand, the petitioner, being an engineering graduate, has put all her knowledge and learning into practice to find out whether the shifting of alignment is proper or not. But it is to be pointed out that the mere fact that the petitioner is an engineering graduate adept at finding out the lacunae in the project cannot be a ground to hold that the proposal to shift the alignment is wholly unjustified and not technically feasible, as the said project has been approved by the Chief Engineer, who is also a person equally competent and an engineering professional with rich and abundant experience in the said field. Therefore, without proper materials to substantiate extraneous consideration, casting aspersions against the Chief Engineer, who has approved the project, cannot form the basis for this Court to undertake a roving enquiry.

21. The Hon'ble Apex Court in ***Union of India – Vs – Kushala Shetty (2011 (12) SCC 69)*** has spoken about the technical expertise of the National Highways



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and 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 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.”



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22. It is to be pointed out that the State Highways is akin to National Highways and the technical expertise of the State Highways is no less inferior to that of National Highways. 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 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.

23. In pursuant to the orders of this Court, a report has been filed by the Chief Engineer dated 13.09.2022, it has been submitted that the Alignment



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Committee comprised of the Superintending Engineer (H) concerned wing and the Superintending Engineer (H), Construction & Maintenance of the respective circle, who approve the alignment and in the Board of Engineers meeting held on 26.2.2018, the committee has approved the alignment. Further the said alignment has been approved on 1.10.19 after joint inspection of the site was conducted and after carefully studying and anticipating the future growth. It is further evident from the said report that work on the roads and culverts is almost completed and any change would impact not only the alignment, but would involve huge financial loss to the Government.

24. Further, the alignment proposal has also been placed before this Court. A perusal of the above report, which also takes within it a project sketch reveals that though the criss-cross of the roads is in the form of 'X' or a 'Scissor', however, the connectivity from one part of the road to the other part does not go through the intersection, but rather, it takes a wedge-shaped cut on the left side to join the other road. Even to the naked, this Court, without technical expertise could visualize the manner in which the road formation is being taken. So it cannot be said that the alignment proposal has not been properly considered by



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the technical experts while approving the alignment. Therefore, the contention with regard to shift in alignment, put forth on behalf of the petitioner cannot be affirmatively considered by this Court.

25. For the reasons aforesaid, this Court is of the considered view that the contention put forth on behalf of the petitioner do fall short of acceptance and, therefore, this Court has no hesitation to dismiss the writ petition. Accordingly, the writ petition is dismissed. Consequently, connected miscellaneous petitions are closed. In the circumstances of the case, there shall be no order as to costs.

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Index : Yes / No

Internet : Yes / No

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M.DHANDAPANI, J.

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**PRE-DELIVERY ORDER IN
W.P. NO.20156 OF 2020**

**Pronounced on
11.10.2022**