



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2022

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.33000 of 2018
and W.M.P.Nos.38262 and 38265 of 2018

1.K.Matheswaran
2.K.Mailsamy

...Petitioners

Vs

1.The State of Tamilnadu
Rep by its Additional Chief Secretary
The Highways and Minor
Ports (HP1) Department
Fort St.George
Chennai - 600 009.

2.The Collector
Office of the Salem Collector
Salem.

3.The Land Acquisition Officer cum
District Revenue Officer
Office of the Land Acquisition Officer cum
District Revenue Officer
Salem.

...Respondents

Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari, calling for the records of the 3rd respondent in impugned notification in Na.Ka.No.29598/2016/B3 dated 24.11.2017 issued under Section 15(2) of the Tamilnadu Highways Act, 2001 (Tamilnadu Act 34/2002) and the consequential impugned notice issued by the 1st respondent in G.O.(D).No.197 dated 16.07.2018 under Section 15(1) of the Tamilnadu Highways Act, 2001 (Tamilnadu Act 34/2002) and quash the same.

For Petitioners : Mr.M.Raja Sekhar

For Respondents : Mr.G.Ameedius
Government Advocate



ORDER

This writ petition has been filed to call for the records of the 3rd respondent in Na.Ka.No.29598/2016/B3 dated 24.11.2017 issued under Section 15(2) of the Tamilnadu Highways Act, 2001 (Tamilnadu Act 34/2002) and the consequential impugned notice issued by the 1st respondent in G.O.(D).No.197 dated 16.07.2018 under Section 15(1) of the Tamilnadu Highways Act, 2001 (Tamilnadu Act 34/2002) and quash the same.

2.The property including the land and building comprised in T.S.No.34/2E4, Ward-A, Block-12, Door No.23, Saratha College Road, Salem, measuring to an extent of 4760 sq.ft., was purchased by the petitioners from one Ganesh and others by a registered sale deeds dated 13.06.2002. Thereafter, the petitioners applied for mutation of revenue records and accordingly by an order dated 18.08.2003, the Tahsildar, Salem ordered to mutate the revenue records in favour of the petitioners. Further, the petitioners also availed loan for construction of house from IndusInd Bank. While being so, the respondents proposed to acquire the lands for the construction of High-level flyover from 5 road junction to Ramakrishna Junction. The land comprised in Survey No.41/1 was acquired and the work has been commenced to construct the fly over.

3.In the year December 2016, the respondents acquired the lands adjacent to the petitioner's property. Therefore, the petitioners approached the 3rd respondent and requested to furnish the details of extension of proposed service road, which is parallel to the Ramakrishna Road Junction flyover. In the meanwhile, the property in S.No.34/2E4 was sub divided into S.No.41/1 and 41/2. However, the petitioners were orally informed that the property is not required for extension of service road. Thereafter, the notice under Section 15 (2) of the Tamil Nadu Highways Act, 2001 (herein after referred to as "the act") was issued on 24.11.2017, thereby proposed to acquire the land to an extent of 49.5 sq.meter, for formation of service road to the 5 road to Ramakrishna Road Junction flyover. Immediately, the petitioners have submitted their explanation on 27.11.2017 stating that though their property has not been mentioned in the said notice, requested the respondents to slightly rearrange the alignment of the service road to an extent of 4 feet. Again on 23.12.2017, the petitioners submitted a detailed explanation to the 3rd respondent. However, the petitioners were not called for any enquiry as contemplated in the Act.

4.During the 1st week of November 2018, the respondents without conducting any enquiry passed the order under Section 15 (1) of the Act and tried to put up stones in the subject



property. Therefore, the petitioners have filed the writ petition in W.P.No.30793 of 2018, challenging the notice dated 24.11.2017, issued under Section 15 (2) of the Act.

5. When the writ petition was came up for hearing, it is brought to the notice of this Court that the notice was issued under Section 15(1) of the Act, and therefore, the petitioners had withdrawn the writ petition and filed the present writ petition, challenging the notification issued under Section 15 (1) of the Act.

6. The 3rd respondent filed counter and averred that in the G.O.Ms.No.56, H & MP (HP1) dated 14.05.2015 it has been resolved to construct a flyover from 5 roads to Ramakrishna road junction in order to ease the heavy vehicular traffic in the Salem 5 roads to Hasthampatty Junction Road. In order to implement the project, the respondents proposed to acquire 1780 sq.mtr., situated either side of the 5 roads to Hasthampatty junction road in T.S.No.89 etc., Block 31, 32, 36 in ward 'c' of Reddiyur Village and in T.S.No.2, 3 Block 31 Ward 'D' of Alagapuram Village, T.S.No.1 etc., of Block 1 Ward 'K' of Hasthampatty Village, Salem Taluk. Accordingly, the notification under Section 15(2) of the Act was notified. On 27.05.2017, 6 objection petitions were received by the Land Acquisition Officer and thereafter on 13.07.2017 enquiry was conducted. The notifications issued under Section 15(1) of the Act was approved by the Government in G.O.(D).No.197 dated 16.07.2018. Thereafter, the notices under Section 19 (2) of the Act was issued on 13.08.2018, for the enquiry to be held on 31.08.2018. Further, the objections submitted by the petitioners dated 27.11.2017 revealed that they apprehend the acquisition proceedings against the subject land and requested to acquire the lands without acquiring their land and buildings. Therefore, the petitioners were informed to verify the earlier notifications published in the Gazette and dailies for their apprehension. Since the petitioners names were not available in the revenue records, the earlier writ petition filed by them had been withdrawn.

7. On the other hand, the land comprised in T.S.No.41/4 stands in the name of M.S.Ganesh, viz., the vendor of the petitioners and he was duly served with notice under Section 15 (2) of the Act. On perusal of notification issued under Section 15(2) of the Act, it shows the name of M.S.Ganesh, in respect of the property comprised in T.S.No.41/1, Block 30, Ward H of Salem Town Municipal area of Hasthampatty Village. The petitioners purchased the subject property in T.S.No.34/2E4, Ward-A, Block-12, Door No.23, Saratha College Road, Salem, measuring to an extent of 4760 sq.ft., by a registered sale deeds dated 13.06.2002 from the said Ganesh, S/o Subburaya Aiyar.



Thereafter on 18.08.2003, the Tahsildar, Salem ordered to mutate the revenue records in favour of the petitioners. Accordingly, the revenue records were mutated and the petitioners were issued with patta for the subject property. Thereafter, during the Town Survey, new Survey Number has been provided as 41/1 and 41/2, for the subject property. Though the Tahsildar, Salem ordered to mutate the revenue records in favour of the petitioners, the town survey register stands in the name of the said Ganesh. Further, the notification was not issued in the name of the petitioners and they submitted their explanation/objections for the proposed acquisition proceedings dated 27.11.2017. No enquiry was conducted as contemplated under Section 5(2) of the Act. Even, the respondents have not considered the detailed explanation submitted by the petitioners and passed the order under Section 15(1) of the Act. That apart, now the entire project has been completed and the over bridge has been opened for public use along with service road. As far as the subject land, there is no acquisition proceedings and the petitioners are in possession and enjoyment of their property. Further, no award has been passed in respect of the subject land and no award enquiry had been conducted so far. It seems that the subject land is not required for any acquisition proceedings, since the entire project has already been completed.

8.In view of the above findings, the notification in Na.Ka.No.29598/2016/B3 dated 24.11.2017 issued under Section 15 (2) of the Tamilnadu Highways Act, 2001 (Tamilnadu Act 34/2002) and the consequential impugned notice issued by the 1st respondent in G.O.(D).No.197 dated 16.07.2018 under Section 15 (1) of the Tamilnadu Highways Act, 2001 (Tamilnadu Act 34/2002) are hereby quashed, in respect of the land and building comprised in T.S.No.34/2E4, Ward-A, Block-12, Door No.23, Saratha College Road, Salem, measuring to an extent of 4760 sq.ft.,.

9.In the result, this writ petition stands allowed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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To

1.The Additional Chief Secretary,
State of Tamilnadu,
The Highways and Minor Ports (HP1) Department,
Fort St.George,
Chennai - 600 009.

2.The Collector,
Office of the Salem Collector,
Salem.

3.The Land Acquisition Officer cum
District Revenue Officer,
Office of the Land Acquisition Officer cum
District Revenue Officer, Salem.

+lcc to Mr.M.Raja Sekhar, Advocate SR. No. 4118
+lcc to Government Pleader SR. No.4942

W.P.No.33000 of 2018

SR (CO)
PR (10/02/2022)