



W.P.(MD)No.9400 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 25.04.2022

Pronounced on : 02.12.2022

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.9400 of 2009

VTM Limited,
represented by its
Authorized Signatory,
P.K.Venugopal,
Sulakarai,
Aruppukottai Taluk,
Virudhnagar District.

... Petitioner

Vs.

1.The Union of India,
Represented by its,
Deputy Secretary,
Department of Road Transport & Highways,
Ministry of shipping Road Transport and Highways,
New Delhi

2.The Competent Authority-cum
Special District Revenue Officer,
(Land Acquisition Act NH-7 and 45B)
Virudhunagar.

3.The Project Director,
National Highways Authority of India,
87/1 SBI First Colony Extension,
Bypass Road
Madurai-625 016.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned notification bearing Roc.No.A1/74/06 dated 08.07.2008 issued by the second respondent read with notification bearing S.O.1232(E) Notification dated 14.05.2009 issued by the first respondent and published in the Gazette of India No.762 dated 15.05.2009 in respect of the lands comprised in Sr.No.239/1B and 240 in Sulakkarai Village, Aruppukottai Taluk, Virudhunagar District measuring an extent of 1505 sq.mtrs and quash the same.

For Petitioner : Mr.Raguvaran Gopalan

For Respondents : Mr.S.Jeyasingh for R1
Mr.Arulvadivel @ Sekar for R2 and R3

ORDER

This writ petition has been filed as against the notification issued by the second respondent under the Section 3 A of the National Highways Act, 1956, in ROC.No.A1/74/06, dated 08.07.2008 and the notification dated 14.05.2009, issued by the first respondent published in Gazette of India No.762, dated 15.05.2009 under Section 3 E of the said Act.

2. By the impugned notification dated 08.07.2008, the second respondent intends to acquire an extent of 1505 sq. Meters of land in S.Nos.239/1B and 240 of the petitioner's land for erecting NH 7. The petitioner has filed the present



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writ petition that the statutory procedures as laid down under Section 48 of the National Highways Act are not complied with. Therefore, the impugned notifications are liable to be set aside.

3. The learned counsel for the petitioner submitted that the petitioner is the company having property in Sulakarai Village, Virudunagar District. The land belongs to the company and the respondents have already acquired the lands of the company to the extent of 4833 sq. meters in the year 2004 for expansion of road and four laning of NH7. By the impugned notification, the respondents intend to acquire additional land of this petitioner's company to the extent of 1505 sq. meter for future expansion and therefore, the petitioner has also raised certain objections, without producing the plan and without considering his objection as per sub-section 1 of Section 3C of the National Highways Act, the respondents have proceeded to pass subsequent proceedings under Section 3E and therefore, he has filed this writ petition.

4. The learned counsel for the petitioner made his submissions as follows:

(i) The notification under Section 3A was issued on 08.07.2008 and as per the notification, the interested persons in the land were called upon to give objections within 21 days from the date of publication of the notification as per



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sub-section (1) of Section 3C of the Act. The competent authority and Special District Revenue Officer land acquisition (NH 7 Virudhunagar) informed in writing that they would be provided a personal opportunity and they will be permitted to inspect the copies of the plan. The petitioner has submitted his objection on 01.08.2008, within 21 days as per the Act and the second respondent/ competent authority cum Special District Revenue Officer had also called the petitioner for enquiry on 19.08.2008. The petitioner has attended the enquiry and also sought for the copies of the project report and also pointed out that there are excess land acquired on the western side and there is no need for further acquisition of 1505 sq.feet in the petitioner's land on the eastern side. Without passing any order based on his objection, the second respondent simply by his letter dated 16.09.2008 has returned to the Special Thasildhar, Virudhunagar that the objection has been received from the petitioner and the same has been forwarded to the Project Director for advice and the Project Director, vide his letter, dated 06.09.2008, directed additional land to be acquired. Therefore, based on his advice, the land in S.Nos.239/1B and 240 is to be acquired.

(ii) The competent authority has not passed any orders either by rejecting or allowing the objection raised by the petitioner and also not offered any



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explanation for rejecting the objection of the petitioner by simply referring to the letter to the Project Director as directed by the Tasildhar to acquire the land. However, the Project Report sought for by the petitioner was not furnished and not formal order of rejection was passed by the Competent Authority.

(iii) The decision has been taken based on the letter dated 16.09.2008, and that copy was not furnished to the petitioner and the competent authority has not independently recorded any reason for rejecting the petitioner's application. The competent authority is independently required to exercise his mind and provide reason under Section 3C of the Act and he cannot simply forward recommendation of the third respondent. However, the third notification was issued as if no objection was received under Section 3C of the Act.

(iv) The learned counsel for the petitioner has also relied on the order of Full Bench of this Court in ***R.Pari Vs. The Special Tahsildar, Adi-Dravidar Welfare, Devakkottai***, reported in ***2006 (4) CTC 609***, wherein the Hon'ble Full Bench held that it is necessary to give an opportunity of hearing and for furnishing the copy of the report of the competent authority and the competent authority has to independently exercise his mind on allowing or rejecting the



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objection. He has also relied on the order of Hon'ble Supreme Court in the case of ***Competent Authority Vs. Barangore Jute factory***, reported in ***(2005) 13 SCC 477***, wherein it is held that when the statute mandates the particular thing, it has to be done in that manner or not at all, the respondents ought to have provided site plan and Section 3D notification is consequent to Section 3C and any failure to adhere to the procedures contemplated under the National Highways Act at any stage of the proceedings would vitiate the entire acquisition proceedings.

(v) The learned counsel for the petitioner submitted that the notification under Section 3A was issued on 08.07.2008. He has submitted his objection as per Section 3C on 19.08.2008 and also filed a writ petition on 16.09.2009. At the time of the admission of the writ petition, this Court passed an order of *status quo* and the same was in force till 2014. Admittedly, the possession of the property is with the petitioner and the respondents intended to acquire the property for future expansion and therefore, as per the decision rendered by the Hon'ble Supreme Court in the case of ***Competent Authority Vs. Barangore Jute factory*** reported in ***(2005) 13 SCC 477***, in the event, this Court is not inclined to entertain this writ petition, at least grant the relief of compensation as per the date of taking of possession. The National Highways Act provides for



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acquisition of lands for construction and operation of highways and not for future use.

5. The learned counsel for the respondents submits that the writ petition is itself is not maintainable and that the notification under Section 3(a)(1) of the Act was published on 27.05.2008 and notification under Section 3d(1) was published on 14.05.2009 and award was also passed on 24.08.2009 and the petitioner had filed this writ petition only on 16.09.2009, after passing of the award and therefore, the writ petition is not maintainable. He further submits that the Government of India has widened the Madurai to Kanniyakumari Section of NH 7 and therefore, vide notification, dated 10.08.2005, some of the petitioners' land was acquired. The land in S.No.239/1B measuring to an extent of 255 sq. meters and Survey No.240 measuring to an extent of 1250 sq. meters at Soolakkarai Village is required for future development works and that the lands are essential for the newly proposed constructions of light vehicular under pass at Soolakkarai Junction, which is a blackspot location .

6. According to the learned counsel for the respondents, the notification under Section 3(1) of the National Highways Act was published on 27.05.2008 and also published in two daily magazines on 14.07.2008. The petitioner has



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given his objection on 01.08.2008 and the petitioner was called for personal enquiry on 09.08.2008. The rejection of his application was also intimated to the petitioner vide letter, dated 16.09.2008. The objections were forwarded to the Project Director, the Project Director has insisted that the lands are required for expansion and the same was also intimated by the third respondent to the petitioner in his letter dated 16.09.2008 in Na.Ka.No.A1/65/206 and there is no violation in the procedures contemplated under Section 3C of the Act. After completion of enquiry under Section 3C of the Act, notification under Section 3(d)(1) was published on 14.05.2009 and award was also passed on 24.08.2009. He further submits that the additional notification was made only to acquire adequate lands by duly ensuring the future development works. The road cannot be constructed according to the whims and fancies of the petitioner. The petitioner is not technically qualified. On the other hand, during the widening of road, the detailed project report had been prepared by a Team of Experts with years of experience and approved by appropriate Governments. The present alignment is prepared to minimize the damages to reduce the rehabilitation and resettlement issues. Therefore, the Courts which are not technically qualified to decide the viability and feasibility of the particular project and can decide whether the particular alignment would subserve the larger public interest. He also pointed out the scope of Judicial review in this case on technical ground.



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7. This Court considered the rival submissions made and also perused the materials placed on record.

8. This writ petition is filed as against the additional notification issued by the second respondent to acquire certain additional lands for NH-7. The second respondent has already acquired some of the lands of the petitioner at Soolakarai while expanding National Highways as Four lane in the year 2005 and by this additional notification, the second respondent required some more land to an extent of 1505 sq.metres in S.Nos.239/1B and 240 of Soolakkarai Village.

9. The main contention of the petitioner is that the land is not required for the present and it is only for the future development. They are attempting to acquire the petitioner's land at eastern side. The petitioner has also presented his objection as per Section 3C of the Act to the second respondent on 01.08.2008 and he was also called for enquiry on 19.08.2008. However, the notification under Section 3D was published on 14.05.2009 as if there was no objection under Section 3C of the Act. Even according to the respondents these lands are required for future development and therefore the petitioner sought for the detailed project report for submitting his further objection under Section 3C of



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the Act. However the same was not provided to the petitioner and the second respondent has failed to consider their objections raised by the petitioner. This ground raised by the petitioner on the scope of Section 3C of the Act has been decided by the Hon'ble Supreme Court in the case of ***Union of India Vs.Kushala Shetty*** and others reported in ***2011 12 SCC 69*** and the relevant paragraphs are extrated as under:

"Learned counsel submitted that compliance of provision contained in Section 3C (2) of the 1956 Act is not an empty formality and the Competent Authority is required to objectively consider the objections filed by the land owners and decide the same by passing a speaking order. Learned counsel then assailed the rejection of the objections filed by the land owners on the ground that the Competent Authority had not recorded cogent reasons for refusing to entertain their plea that the proposed extension of the highways can be effectively done by using the parambok land.

17. We have considered the respective submissions. Sections 3A, 3C and 3D, which have bearing on this case, read as under:

"3A. Power to acquire land, etc.-

(1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it



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may, by notification in the Official Gazette, declare its intention to acquire such land.

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.

3C. Hearing of objection,-

(1) Any person interested in the land may, within twenty- one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation. - For the purposes of this sub-section, legal practitioner has the same meaning as in clause (i) of sub-section



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(1) of section 2 of the Advocates Act, 1961 (25 of 1961).

(3) Any order made by the competent authority under sub- section (2) shall be final.

3D. Declaration of acquisition.-

(1) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.

(2) On the publication of the declaration under sub- section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land a notification has been published under subsection (1) of section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 3A is stayed by an order of a court shall be excluded.



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(4) *A declaration made by the Central Government under subsection (1) shall not be called in question in any court or by any other authority."*

18. The scheme of acquisition enshrined in the above reproduced provisions makes it clear that once the Central Government is satisfied that any land is required for the building, maintenance, management or operation of a national highway or part thereof, then, it shall declare its intention to acquire such land by issuing a notification in the official Gazette giving brief description of the land. The substance of the notification is also required to be published in two local newspapers of which one has to be in a vernacular language. Any person interested in the land can file objection within 21 days from the date of publication of the notification in the official Gazette. Such objection is required to be made to the Competent Authority in writing. Thereafter, the Competent Authority is required to give the objector an opportunity of hearing either in person or through a legal practitioner. This exercise is to be followed by an order of the Competent Authority either allowing or rejecting the objections. Where no objection is made to the Competent Authority in terms of Section 3C(1) or where the objections made by the interested persons have been disallowed, the Competent Authority is required to submit a report to the Central Government, which shall then issue a notification in the official Gazette that the land should be acquired for the purpose or purposes mentioned in Section 3A(1).



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On publication of declaration under Section 3D(1), the land vests absolutely in the Central Government free from all encumbrances. Sub-section (3) of Section 3D provides that where no declaration under sub-section (1) is published within a period of one year from the date of publication of notification under Section 3A(1), the said notification shall cease to have any effect. By virtue of proviso to Section 3D(3), the period during which any action or proceeding taken in pursuance of notification issued under Section 3A(1) remains stayed by a Court shall be excluded while computing the period of one year specified in Section 3D(3).

19. In this case, notification dated 10.8.2005, which was published in the official Gazette of the same date and of which substance was published in two local newspapers, contained full description of the land proposed to be acquired for widening three National Highways. The names of the villages in which the land proposed to be acquired was situated, the survey numbers including sub-survey numbers, the nature, type and area of the land were also given in the schedule appended to the notification. Not only this, it was clearly mentioned that land plans and other details of the land are available in the office of the Competent Authority. This is the reason why none of the land owners (including the respondents) made any grievance that the notification issued under Section 3A(1) of the 1956 Act was vague or that due to lack of particulars/details, they were prevented from effectively exercising their right to file objections in terms of Section 3C(1). Of course, a



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grievance of this score was made in the objections dated 16.10.2006 filed by some of the land owners of Padavu Village, but that was clearly an afterthought and, in any case, the same did not require consideration because of non- adherence to the time schedule specified in Section 3C(1) of the 1956 Act.

20. The only reason assigned by the Division Bench of the High Court for upsetting the well considered order passed by the learned Single Judge negating the respondents' challenge to the acquisition was that declaration under Section 3D(1) was published even before communication of the decision taken by the Competent Authority in terms of Section 3C(2). The process of reasoning adopted by the Division Bench for recording its conclusion appears to have been influenced by an assumption that the objections filed by the land owners had not been decided till the issue of declaration under Section 3D(1). However, the fact of the matter is that the Competent Authority had, after giving opportunity of personal hearing to the objectors, passed order dated 11.10.2005 and rejected the objections. Though, that order was not crafted like a judicial order which is passed by a legally trained mind, the rejection of the representations made by the respondents cannot be faulted only on that ground. The Competent Authority did advert to the substance of objections, the details of which have been incorporated in Annexure P-3 filed before this Court. The concerned officer rejected the same by observing that the land proposed for acquisition is necessary for widening the



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existing National Highways into four lanes. If the consideration made by the Competent Authority is judged in the backdrop of the fact that a Special Purpose Vehicle was incorporated with the name New Mangalore Port Road Company Limited for implementation of the project known as New Mangalore Port Road Connectivity Project from Surathkal to Nantoor and B.C.Road to Padil along with bypass from Nantoor to Padil, it is not possible to castigate the proved reasons recorded by the Competent Authority for rejecting the objections.

10. In the very same judgment, the Hon'ble Supreme Court has also stated as follows:

"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



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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."

11. In view of the above position, this Court is not inclined to entertain this writ petition on this ground. However, with regard to the other contention of the learned counsel for the petitioner, the land is required only for future development and the land is still available with them, the Hon'ble Supreme Court in the case of ***Competent Authority Vs. Barangore Jute factory*** reported in ***(2005) 13 SCC 477*** held as follows:

"Normally, compensation is determined as per the market price of land on the date of issuance of the notification regarding acquisition of land. There are precedents by way of judgments of this Court where in similar situations instead of quashing the impugned notification, this Court shifted the date of the



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notification so that the land owners are adequately compensated.

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Reference may be made to:

- (a) *Ujjain Vikas Pradhikaran v. Rajkumar Johri and others*
- (b) *Gauri Shankar Gaur & Ors. v. State of UP & Ors.*
- (c) *Haji Saeed Khan & Ors. v. State of UP & Ors.*

In that direction the next step is what should be the crucial date in the facts of the present case for determining the quantum of compensation. We feel that the relevant date in the present case ought to be the date when possession of the land was taken by the respondents from the writ petitioners. This date admittedly is 19th February, 2003. We, therefore, direct that compensation payable to the writ petitioners be determined as on 19th February, 2003, the date on which they were deprived of possession of their lands. We do not quash the impugned notification in order not to disturb what has already taken place by way of use of the acquired land for construction of the national highway. We direct that the compensation for the acquired land be determined as on 19th February, 2003 expeditiously and within ten weeks from today and the amount of compensation so determined, be paid to the writ petitioners after adjusting the amount already paid by way of compensation within eight weeks thereafter. The claim of interest on the amount of compensation so determined is to be decided in accordance with law by the appropriate authority. We express no opinion about other statutory rights, if any, available to the parties



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in this behalf and the parties will be free to exercise the same, if available. The compensation as determined by us under this order along with other benefits, which the respondents give to parties whose lands are acquired under the Act should be given to the Writ Petitioners along with what has been directed by us in this judgment."

12. Admittedly, the land is required for future development and the respondents have admitted in Paragraph No.6 of the counter affidavit. The petitioner has filed the above writ petition on 16.09.2009 and this Court while entertaining the writ petition, granted an interim order that the respondents shall not demolish the properties of the writ petitioner by order dated 07.09.2009 in M.P(MD).No.2 of 2009 in W.P(MD).No.9400 of 2009. Though this interim order has been granted for a limited period, the respondents have not filed any application to vacate the interim order and the miscellaneous petition was closed only on 24.01.2014. The second respondent also admitted in his counter affidavit that the petitioner is in possession of the land intended to be acquired.

13. In view of the decisions of the Hon'ble supreme Court cited *supra*, this Court is not inclined to entertain this writ petition however since the possession of the land is still with the petitioner and that the land is required for



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future expansion, the respondents 2 and 3 shall pay the compensation from the date on which the actual possession of the land is taken from the petitioner, as decided by the Hon'ble Supreme Court in the case of ***Competent Authority vs. Bangalore Jute Factory*** cited *supra*. The amount of compensation so determined shall be paid to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order after adjusting the amount, if any, already paid.

With the above directions, this Writ Petition is partly allowed. No Costs.

02.12.2022

Index : Yes / No

Internet : Yes

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To

- 1.The union of India,
Represented by its,
Deputy Secretary,
Department of Road Transport & Highways,
Ministry of shipping Road Transport and Highways,
New Delhi
- 2.The Competent Authority-cum
Special District Revenue Officer,
(Land Acquisition Act NH-7 and 45B)
Virudhunagar.
- 3.The Project Director,
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Pre-delivery Order made in
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